IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

PLAINTIFFS' MOTION FOR INTERLOCUTORY INJUNCTION

Pursuant to O.C.G.A § 9-4-3, Plaintiffs, four duly elected District Attorneys of Georgia, request that this Court enter an order for an interlocutory injunction against Defendants, the named Commissioners of the Prosecuting Attorneys Qualifications Commission ("PAQC"), to prohibit the enforcement of Georgia Senate Bill 92 ("SB 92"). Enacted earlier this year, SB 92 amended various provisions of Georgia law to create new obligations for, oversight over, and mechanisms for punishment and removal of local prosecutors. *See, e.g.*, O.C.G.A. §§ 15-18-6(4); 15-18-32. SB 92 is an unprecedented intrusion into the power and authority of district attorney protected by the Georgia Constitution, *State v. Wooten*, 273 Ga. 529, 531 (2001), and poses an imminent threat to Plaintiffs and their offices, the administration of the criminal justice system, the rights of defendants in criminal proceedings, and the will of voters who have duly elected prosecutors throughout the state.

As detailed in Plaintiffs' Memorandum of Law, the equities favor the entry of an interlocutory injunction before the PACQ's authority to investigate and make determinations on complaints against Plaintiffs and other district attorneys goes into effect on October 1, 2023. *See SRB Inv. Servs., LLP v. Branch Banking & Tr. Co.*, 289 Ga. 1, 5 (2011) (describing the factors courts consider in granting an interlocutory injunction). SB 92 violates the Georgia Constitution in at least three ways: (1) by interfering with the judicial branch it constitutes an abridgement of the separation of powers command of the Georgia Constitution; (2) by punishing district attorneys for their speech on criminal justice and their work as prosecutors, it violates free speech principles under both the federal and Georgia constitutions; and (3) by establishing vague standards by which the PAQC will evaluate the action and choices of Plaintiffs and other prosecutors, it runs afoul of due process requirements of both the federal and Georgia constitution.

Although Plaintiffs do not need to "prove all four of the [interlocutory injunction] factors," *SRB Inv. Servs., LLP* 289 Ga. at 5, all are present here. In addition to the clear constitutional violations, Plaintiffs' offices are already affected by SB 92, with further ramifications threatened by the imminent activation of the PAQC; the effects on the district attorneys and their offices are far more consequential than any harm from delaying the operation of a commission that has never existed, and given other existing mechanisms to oversee and remove local prosecutors for misconduct under state law; and the public interest in local democracy, fair administration of justice, and constitutional rights of defendants all weigh in favor of the issuances of an interlocutory injunction.

For these reasons and for the reasons set forth in the accompanying Memorandum of Law, Plaintiffs respectfully request that this Court issue a preliminary injunction prohibiting

Defendants, their officers, agents, servants, employees, representatives, and anyone acting on behalf of, in active participation with, or in concert with Defendants, from conducting any investigation or disciplinary proceeding pursuant to SB 92, during the pendency of this litigation. Plaintiffs respectfully request expedited consideration of the request for interlocutory injunction so that any order may be entered on or before September 30, 2023.

Respectfully submitted,

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MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFFS' MOTION FOR INTERLOCUTORY INJUNCTION

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I. INTRODUCTION AND SUMMARY

Plaintiffs, four district attorneys from across Georgia, filed this lawsuit to challenge the constitutionality of Senate Bill 92, 2023 Ga. Laws 349, which created a new disciplinary body with wide-ranging authority to remove district attorneys: Prosecuting Attorneys Qualifications Commission ("PAQC"). The Plaintiffs now seek interlocutory injunctive relief, pursuant to O.C.G.A. §§ 9-4-3 and 9-11-65(a), to preserve the status quo, by enjoining Defendants[1] from conducting any investigation or disciplinary proceedings during the pendency of this lawsuit.

An interlocutory injunction is justified here. Plaintiffs are substantially likely to prevail on the merits, as SB 92 infringes on district attorneys' constitutional role; regulates speech on the basis of content and viewpoint without a compelling justification; and provides unconstitutionally vague standards for discipline of prosecutors—up to removal and disqualification from office. Further, while the law is already interfering with the operation of Plaintiffs' offices, as well as the criminal justice system and the community more broadly, the injunction would do no harm to defendants and would serve the public interest.

II. STATEMENT OF FACTS

A. District Attorneys Must Exercise Prosecutorial Discretion to Fulfill the Duties Communities Elect Them to Perform.

The Georgia Constitution gives voters in each judicial circuit the power to elect a district attorney every four years. The district attorney has the duty "to represent the state in all criminal cases in the superior court of such district attorney's circuit." Ga. Const. Art. 6, § 8 ¶ III(d). The

[1] Plaintiffs bring this lawsuit—and seek this injunction—against Defendants in their official capacities on the federal-law claims, pursuant to *Ex parte Young*, 209 U.S. 123 (1908), and in their individual capacities on the state-law claims. *See Bd. of Commissioners of Lowndes Cnty. v. Mayor & Council of City of Valdosta*, 309 Ga. 899, 903 (2020) ("[S]overeign immunity does not bar suits for injunctive and declarative relief against state officials in their individual capacities.").

district attorney's "duty is to seek justice, not merely to convict . . . because the prosecutor represents the sovereign and should exercise restraint in the discretionary exercise of governmental powers." *State v. Wooten*, 273 Ga. 529, 531 (2001).

Accordingly, the office of district attorney bears the responsibility to exercise "broad discretion in making decisions prior to trial about who to prosecute, what charges to bring, and which sentence to seek." *Id.* Prosecutors bear this duty from before an indictment through to sentencing. *McLaughlin v. Payne*, 295 Ga. 609, 613 (2014). Each district attorney's exercise of her constitutionally protected authority is "inherent in [her] office and is of the utmost importance in the orderly administration of criminal justice." *State v. Kelley*, 298 Ga. 527, 530 (2016). Infringement of this authority "impermissibly interferes with the State's right to prosecute." *Id*.

Beyond the constitutional command, prosecutorial discretion is required by simple practicality. Prosecutors must allocate scarce resources and consider the long-term effects of their prosecutorial decisions. Exh. 1, Affidavit of Sherry Boston ("Boston Aff.") ¶ 6; Exh. 2, Affidavit of Jared Williams ("Williams Aff.") ¶ 16. Limited resources must be preserved to address the most serious crimes in the community. Exh. 3, Affidavit of Jonathan Adams ("Adams Aff.") ¶ 22-23. External resource constraints present additional challenges. For example, the Georgia Bureau of Investigation Crime Lab limits its testing capacity, especially for drug cases, and often take substantial time to return results. Williams Aff. ¶ 27; Exh. 4, Affidavit of Flynn Broady, Jr. ("Broady Aff.") ¶ 7.

B. The Plaintiff District Attorneys Exercise Their Discretion to Promote Public Safety in Their Circuits.

All Plaintiffs exercise their discretion to use their offices' resources efficiently and promote justice and public safety in their communities. Facing significant case backlogs, Plaintiffs have

directed their staff to prioritize prosecution of crimes that pose the most serious risk to public safety. Boston Aff. ¶ 9; Williams Aff. ¶ 14. In recent years, court closures due to the COVID-19 pandemic, combined with existing resource constraints among law-enforcement partners, have caused or exacerbated case backlogs. Boston Aff. ¶ 25-27; Williams Aff. ¶¶ 9-10; Adams Aff. ¶ 9. These backlogs deprive victims, criminal defendants, and the community of a swift adjudication, while overwhelming prosecutorial capacity. Williams Aff. ¶ 9; Exh. 5, Affidavit of Courtney Elizabeth Guthrie-Papy ("Guthrie-Papy Aff.") ¶¶ 18-19. To address the backlog, DA Williams reorganized his office to create a Major Crimes Division. Williams Aff. ¶ 15. The Plaintiffs use pretrial diversion and other programs and accountability courts to resolve cases more efficiently, while providing services that promote public safety in the long term. Boston Aff. ¶¶ 18-24; Williams Aff. ¶¶ 17-23; Adams Aff. ¶¶ 12-19; Broady Aff. ¶¶ 8-11.

These efforts rely on clear communication throughout the district attorney's office, to ensure that the dozens of assistant district attorneys across multiple courtrooms (and sometimes courthouses) are aligned. This communication occurs through training and informal communications, as well as through written policies, such as DA Boston's Bill of Values and DA Adams's Sentencing Guidelines. Boston Aff. ¶¶ 13-15 & Att. B; Adams Aff. ¶¶ 26-32 & Att. B. The Legislature has recognized the value of such written guidelines, specifically requiring guidelines for pretrial diversion programs established pursuant to O.C.G.A § 15-18-80.

Plaintiffs also communicate regularly with the public, from DA Broady's quarterly updates to DA Boston's participation in community meetings. This openness promotes transparency and fosters trust in the office. Boston Aff. ¶ 40; Broady Aff. ¶¶ 13-15

To protect the resources for cases that prosecutors seek to address, Plaintiffs must also direct resources away from those cases that do not merit as much attention. DA Adams's office

resolves about 30% of cases outside of traditional adjudication. Adams Aff. ¶ 25. DA Boston's Bill of Values includes a commitment to seek indictments only on cases that the prosecutor is confident can be proven beyond a reasonable doubt. Boston Aff. ¶ 14. DA Williams shares this approach. Williams Aff. ¶ 7. Through the Early Intervention Court, and now Alternative Resolution Court, DA Broady resolves certain cases quickly, connecting defendants with services and avoiding the expense of traditional adjudication. Broady Aff. ¶¶ 9-10. To address the substantial backlog created by COVID-19, DA Boston adopted an evidence-based policy, which directs the dismissal or non-presentation of certain low-level crimes to focus resources on more serious matters. Boston Aff. ¶¶ 25-37 & Att. E. And in response to citizen-filed warrants, DA Adams issued a memorandum noting his refusal to prosecute adultery, and certain other crimes that he believes to be an unwise use of prosecutorial resources and unconstitutional. Adams Aff. ¶¶ 33-39 & Att. C.

C. <u>The Georgia Legislature Passed SB 92 to Target Prosecutorial Discretion.</u>

Earlier this year, the Georgia legislature passed SB 92, which aims to discipline prosecutors, including for the exercise of their prosecutorial discretion. In the lead-up to the 2023 legislative session, Governor Kemp posted on Twitter, "Far-left local prosecutors are failing their constituents and making our communities less safe. I look forward to working with members of the General Assembly and [Attorney General Chris Carr] to address it this session."[2] When he ultimately signed the law, he announced that the law would crack down on "rogue or incompetent prosecutors" who, "driven by out-of-touch politics," allegedly "refuse to uphold the law."[3]

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[2] Brian Kemp, TWITTER, https://perma.cc/87B9-MY6U?type=image (Dec. 23, 2022).
[3] Brian Kemp, Office of the Governor, *Gov. Kemp Signs Legislation Creating Prosecuting Attorneys Qualifications Commission*, https://perma.cc/4TMP-K3BY (May 5, 2023).

First, SB 92 establishes a new "individual-review" duty for district attorneys and solicitors general. Section 1 of SB 92 amends the statutory list of duties of a district attorney to add a new duty: "[t]o review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances under oath of duty." O.C.G.A. § 15-18-6(4). Section 3 of the law adds a parallel duty to the statutory list of duties of a solicitor general. O.C.G.A. § 15-18-66(b)(1). Section 4 relatedly amends the recall statute to provide that district attorneys and solicitors general may be subject to recall for discretionary decisions, unlike all other Georgia officials. O.C.G.A. § 21-4-3(7).

Second, SB 92 creates a new politically appointed commission, the Prosecuting Attorneys Qualifications Commission ("PAQC"). The PAQC has "the power to discipline, remove, and cause involuntary retirement of appointed or elected district attorneys or solicitors-general." O.C.G.A. § 15-18-32(a).

Third, SB 92 enumerates certain grounds for discipline that may subject an elected prosecutor to investigation and disciplinary action, up to and including removal and disqualification from office for ten years. O.C.G.A. § 15-18-32(h), (p). Alongside well-understood grounds such as "mental or physical incapacity" or "willful misconduct while in office," O.C.G.A. § 15-18-32(h)(1), (h)(2), the statute adds the new, undefined ground of "[c]onduct prejudicial to the administration of justice which brings the office into disrepute." O.C.G.A. § 15-18-32(h)(6). The statute also provides for discipline based on "willful and persistent failure to carry out" the statutory duties of a district attorney—including the new individual-review duty created by SB 92. O.C.G.A. § 15-18-32(h)(6).

SB 92 has no limits on who may file a complaint with the PAQC, but it sets out requirements before the PAQC may investigate a complaint that addresses a prosecutors' "charging decision, plea offer, opposition to or grant of a continuance, placement of a case on a trial calendar, or recommendation regarding bond." O.C.G.A. § 15-18-32(i)(2). The PAQC may investigate such a complaint where the complainant provides evidence that "it is plausible that the district attorney . . . made or knowingly authorized the decision based on," among other factors: "A stated policy, written or otherwise, which demonstrates that the district attorney . . . categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute" or "Factors that are completely unrelated to the duties of prosecution." O.C.G.A. § 15-18-32(i)(2).

Several phrases in SB 92 lack a clear definition under Georgia law. It is left to the PAQC to "elaborate, define, or provide context" for the statute's grounds for discipline. O.C.G.A. § 15-18-32(c)(3). The factors that are related or unrelated to the duties of prosecution are not defined by SB 92 or elsewhere in Georgia law, nor is there any explanation regarding what offenses a district attorney is required by law to prosecute. Although the statute does not explicitly provide in subsection (h) that non-prosecution is a ground for discipline, its inclusion as a prerequisite for filing a complaint shows that a categorical policy would constitute one of the subsection (h)'s grounds: "willful misconduct," "failure to carry out [statutory] duties," or "conduct prejudicial to the administration of justice."

Any prosecutor that is removed or involuntarily retired by the PAQC will be disqualified from being appointed or elected as a district attorney or solicitor general for ten years. O.C.G.A. § 15-18-32(p). In other words, the voters may not override a PAQC's evaluation of a prosecutor's exercise of discretion.

D. SB 92 Disrupts the Criminal-Justice System and Interferes with Self-Governance.

SB 92's threat of discipline, potentially including removal and disqualification, has already led certain prosecutors to hesitate in their exercise of discretion. DA Adams has rescinded his policy on adultery. Adams Aff. ¶ 43. Although he continues to believe that adultery would be found to be an unconstitutional crime, *id.* ¶ 39, he interprets such a policy to run afoul of the stated-policy provision of SB 92. *Id.* ¶ 43 . Similarly, community leaders in Fulton and Chatham County had successfully partnered with their district attorneys to pursue reforms in the past, but they have noted diminished interest in diversion and other reform efforts due to the passage of SB 92. Guthrie-Papy Aff. ¶¶ 28-32; Exh. 6, Affidavit of Dominique Grant ("Grant Aff.") ¶¶ 21-23. Both Plaintiffs and the criminal defense bar have concerns about the systematic delays resulting from the individual-review duty and other infringements on prosecutorial discretion. Boston Aff. ¶ 44; Williams Aff. ¶ 25; Adams Aff. ¶ 44; Broady Aff. ¶ 18; Exh. 7, Affidavit of Mazie Lynn Guertin ("Guertin Aff.") ¶¶ 8-10

The threat of discipline, particularly for "stated policies," has also inhibited Plaintiffs from clearly articulating their prosecutorial philosophies and informing their constituents of how they are fulfilling voters' mandates. Boston Aff. ¶ 50-51; Williams Aff. ¶ 32; Adams Aff. ¶ 45; Broady Aff. ¶¶ 20-21. The prospect of removal of an elected DA also threatens to disenfranchise the voters that chose that DA for their particular approach to the job. Exh. 8, Affidavit of Rev. Anthony Maurice Booker ("Booker Aff.") ¶ 16.

At the same time, partisan actors have already noted their intention to use the PAQC to target prosecutors who they perceive to be too aggressive in enforcing crimes. State Senator Clint Dixon announced his intention to file a complaint with the PAQC and seek discipline against Fulton County District Attorney Fani Willis for her indictment of former President Donald Trump. Boston Aff. Att. F. Because SB 92 permits any person to file such a complaint and fails

to offer meaningful standards for discipline, such complaints pose a threat to DA Willis and any other district attorney that becomes an attractive political target. Boston Aff. ¶ 47.

If the PAQC begins to take action, such as to penalize DA Boston for the COVID-19 Backlog Policy or to punish the use of a diversion program, the consequences could be more far-reaching. An end or restriction to either program would throw sand in the gears of the criminal justice system and delay justice for victims and defendants alike. Guertin Aff. ¶¶ 9-10.

III. ARGUMENT AND CITATIONS TO AUTHORITY

The decision to grant an interlocutory injunction "is a matter committed to the discretion of the trial court." *Jansen-Nichols v. Colonia Pipeline Co.*, 295 Ga. 786, 787 (2014). "The purpose for granting interlocutory injunctions is to preserve the status quo . . . pending a final adjudication of the case." *Kinard v. Ryman Farm Homeowners Ass'n, Inc.,* 278 Ga. 149, 149 (2004) (internal quotation marks omitted). When deciding whether to grant the injunction, a trial court should consider whether:

1) there is a substantial likelihood that the moving party will prevail on the merits of their claims at trial;

2) there is a substantial threat that the moving party will suffer irreparable injury if the injunction is not granted;

3) the threatened injury to the moving party outweighs the threatened harm that the injunction may do to the party being enjoined; and

4) granting the preliminary injunction will not disserve the public interest.

SRB Inv. Services, LLP v. Branch Banking and Trust Co., 289 Ga. 1, 5 (2011).

Although plaintiffs do not need to "prove all four of these factors," *id.* at 5, all are present here, as described below. Plaintiffs identify multiple constitutional violations; their offices are already affected by SB 92, with further ramifications threatened by the imminent activation of the PAQC; the effects on the district attorneys and their offices are far more consequential than

any harm from delaying the operation of a commission that has never existed; and the public interest in local democracy, fair administration of justice, and constitutional rights of defendants all weigh in favor of the issuances of an injunction.

A. Plaintiffs are Substantially Likely to Prevail on the Merits of Their Claims.

1. SB 92 Violates the Separation of Powers by Infringing on District Attorneys' Constitutional Role.

The Georgia Constitution's provision for separation of powers protects the district attorney's inherent discretion from interference. "The legislative, judicial, and executive power shall forever remain separate and distinct." Ga. Const., Art. 6 § 8 ¶ III. A statute runs afoul of this separation when it "prevents [another] Branch from accomplishing its constitutionally assigned functions. *Perdue v. Baker*, 277 Ga. 1, 13 (2003) (cleaned up). Georgia DAs are constitutional officers assigned to prosecute cases within each circuit. Ga. Const. Art. VI, § 8; *see also McLaughlin v. Payne*, 295 Ga. 609, 612 (2014) ("The elected district attorney is not merely any prosecuting attorney. He is a constitutional officer. . . . In a Georgia criminal prosecution, the whole proceeding, from the time the case is laid before the [district attorney] until the rendition of the verdict, is under the direction, supervision, and control of that officer, subject to such restriction as the law imposes.") In line with her duty "to seek justice, not merely to convict," *Wooten,* 273 Ga. at 531, the DA has "broad discretion in making decisions about whom to prosecute, what charges to bring, and which sentences to seek." *Kelley*, 298 Ga. at 529 (quoting *Wooten*, 273 at 571 (cleaned up)). This authority, especially "the authority of the prosecutor to bargain," is "inherent in his office and is of the utmost importance in the orderly administration of criminal justice." *Id.* (quoting *State v. Hanson*, 249 Ga. 739, 743 (1982)). An attempt to override or control the prosecutor's exercise of her inherent powers constitutes "impermissible interference with the state's right to prosecute." *Id.*

SB 92 impermissibly imposes the legislature's judgment regarding how a DA should do their job, interfering with Plaintiffs' constitutionally protected "right to prosecute" that is "of the utmost importance in the orderly administration of criminal justice." *Kelley*, 298 Ga. at 530. By threatening a district attorney with removal and disqualification from office for any prosecutorial decision that does not comport with, for example, the Commission's unilateral view of what constitutes factors related to prosecution, SB 92 impermissibly interferes with Plaintiffs' "right to prosecute" in alignment with the demands of their office, including their community's prosecutorial priorities, and inflicts grave damage to "the orderly administration of criminal justice" for which Plaintiffs are constitutionally responsible.

The Supreme Court has repeatedly affirmed that "the sole discretion to dismiss cases prior to indictment" and plea bargain are inherent powers of the district attorney. *State v. Hanson*, 249 Ga. at 744; *Lord v. State*, 304 Ga. 532, 539 (2018) (reiterating *Hanson*'s holding that "the authority of the prosecutor to bargain is inherent in his office and is of utmost importance in the orderly administration of criminal justice"); *see also Lee v. King*, 263 Ga. 116 (1993) (district attorney's discretion to dismiss case pre-indictment in exchange for information is inherent to her office). This suite of discretionary powers is exclusive and protected from interbranch interference by the Georgia Constitution's provision for the separation of powers. *Kelley*, 298 Ga. at 530 (rebuffing court's attempt to dismiss charge over the district attorneys' objection because it "impermissibly interferes with the [district attorney's] right to prosecute") (citations omitted).

By interposing legislative judgment about what constitutes proper prosecutorial policy via threat of draconian sanctions for prosecutorial decisions, including those made in charging and plea-bargaining decisions, OCGA § 15-18-32(i), SB 92 intrudes on the sphere of exclusive

prosecutorial power that is protected by the Georgia Constitution. In so doing, it prevents district attorneys from "accomplishing [their] constitutionally assigned functions," *see Perdue*, 277 Ga. at 13. A law that improperly interferes with another branch's domain is invalid. For example, the Sentence Review Panel was an improper legislative intrusion on judicial functions, rendering it invalid. *Sentence Rev. Panel v. Moseley*, 284 Ga. 128, 131 (2008). SB 92 likewise violates the Georgia Constitution's provisions for the separation of powers and is invalid.

2. By Threatening Discipline for Speech Expressing Only Certain Viewpoints on Prosecutorial Philosophy, SB 92 Impairs Plaintiffs' Speech Rights.

SB 92 provides for a prosecutor to be investigated, disciplined, and removed because of what they say. The PAQC may investigate a complaint that reflects a "stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute." O.C.G.A. § 15-18-32(i)(2)(E). Because this provision threatens discipline on the basis of the content and viewpoint expressed by speech, it is permissible only if it meets strict scrutiny: if "the State can demonstrate it is justified by a compelling interest and is narrowly drawn to serve that interest." *Final Exit Network, Inc. v. State*, 290 Ga. 508, 509 (2012) (citing *Brown v. Entertainment Merchants Assn.*, 564 U.S. 786, 799 (2011)). SB 92 does not meet this standard.

There is one basis on which the statute limits the statements that could be the basis of a complaint: the content and viewpoint of the statement. The PAQC will investigate and seek potential discipline for a stated policy about non-prosecution or diversion, but not a complaint which reflects the opposite perspective—one that is more hostile to diversion or other public-safety approaches.

This differential treatment of prosecutors' speech based on its content and perspective is a bedrock violation of the federal and Georgia Constitutions' free-speech guarantees. *See* U.S.

Const., Amdt. 1; Ga. Const. Art. I, § 1, ¶ V. "As a general matter . . . government has no power to restrict expression because of its message, its ideas, its subject matter, or its content." *Final Exit Network*, 290 Ga. at 508 (quoting *Ashcroft v. American Civil Liberties Union*, 535 U.S. 564, 573 (2002) and applying this principle to the Georgia Constitution). The free-speech problem is particularly egregious when "the legislature's suppression of speech suggests an attempt to give one side of a debatable public question an advantage in expressing its views to the people." *First Nat. Bank of Bos. v. Bellotti*, 435 U.S. 765, 785–86 (1978); *see also Rosenberger v. Rector & Visitors of Univ. of Virginia*, 515 U.S. 819, 829 (1995) (characterizing such viewpoint discrimination as "an egregious form of content discrimination").

The Plaintiffs do not sacrifice their rights to free expression by entering public service. Rather, "[t]he role that elected officials play in our society makes it all the more imperative that they be allowed freely to express themselves on matters of current public importance." *Wood v. Georgia*, 370 U.S. 375, 395 (1962) (holding that a Georgia sheriff may not be penalized for his speech); *see also Houston Cmty. Coll. Sys. v. Wilson*, 142 S. Ct. 1253, 1261 (2022) ("The First Amendment surely promises an elected representative . . . the right to speak freely on questions of government policy."). In fact, elected-official speech promotes democratic principles, as it "enhance[s] the accountability of government officials to the people whom they represent, and assist[s] the voters in predicting the effect of their vote." *Brown v. Hartlage*, 456 U.S. 45, 55–56 (1982). In contrast, the prospect of discipline, removal, and disqualification by the PAQC chills the speech of Plaintiffs and their fellow district attorneys. "When one must guess what conduct or utterance may lose him his position, one necessarily will steer far wider of the unlawful zone." *Keyishian v. Bd. of Regents*, 385 U.S. 589, 604 (1967) (internal quotation marks omitted).

Georgia cannot articulate a compelling interest in limiting public understanding of prosecutorial philosophies. Contrast this provision with one of the few content-based restrictions to survive strict scrutiny, Florida's prohibition on judicial fundraising. *See Williams-Yulee v. Florida Bar*, 575 U.S. 435, 445 (2015). While Florida passed that content-based restriction to "maintain[] the public's confidence in an impartial judiciary," *id.*, there is no expectation of neutrality for the prosecutor. Rather, a prosecutor "represents the people of the state" and bears "responsibilities as a public prosecutor to make decisions in the public's interest." *Wooten*, 273 Ga. at 531. This role makes SB 92's muzzling counterproductive to the state's interest. It is all the more important for the public to understand prosecutorial philosophy and for prosecutors to clearly communicate their approach internally.

3. SB 92 is Impermissibly Vague, Depriving District Attorneys of Due Process.

As Georgia elected officials, district attorneys are entitled to due process before they are subject to discipline by the PAQC. Georgia law recognizes that an "elected . . . official who is entitled to hold office under state law has a property interest in his office which can be taken from him only by procedures meeting the requirements of due process." *City of Ludowici v. Stapleton*, 258 Ga. 868, 869 (1989). The federal due-process clause, in turn, looks to state law to determine whether an interest is protected. Property interests "are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law." *Bd. of Regents of State Colleges v. Roth*, 408 U.S. 564, 577 (1972). Accordingly, Georgia's recognition of a property interest in elected office entitles district attorneys to due process protections under both provisions.

"A fundamental principle [of due process] is that laws which regulate persons or entities must give fair notice of conduct that is forbidden or required." *F.C.C. v. Fox Television Stations, Inc.,* 567 U.S. 239, 253 (2012). Under the "void for vagueness" due process doctrine, a law "can

be impermissibly vague for either of two independent reasons. First, if it fails to provide people of ordinary intelligence a reasonable opportunity to understand what conduct it prohibits. Second, if it authorizes or even encourages arbitrary and discriminatory enforcement." *Wollschlaeger v. Governor*, 848 F.3d 1293, 1319 (11th Cir. 2017) (en banc) (quoting *Hill v. Colorado*, 530 U.S. 703, 732 (2000)); *see also Bryan v. Ga. Pub. Svc. Comm'n*, 238 Ga. 572, 574 (1977) (establishing this test under the Georgia Constitution).

SB 92 is vague in both respects: prosecutors are left guessing as to what conduct may be subject to discipline by the PAQC, and the ambiguous standards encourage arbitrary enforcement.

First, SB 92 added a new duty to the extensive list of prosecutorial duties within O.C.G.A. § 15-18-6: "To review every individual case for which probable cause for prosecution exists, and make a prosecutorial decision available under the law based on the facts and circumstances of each individual case." O.C.G.A. § 15-18-6(4). Failure to perform this duty adequately is a ground for discipline, per O.C.G.A. § 15-18-33(h)(3), which lists "willful and persistent failure to carry out duties pursuant to Code Section 15-18-6" as a ground for discipline. But it is ambiguous what this new duty requires. It suggests some additional activity and duty beyond what had already been expected of prosecutors; otherwise. *See Lawson v. State,* 224 Ga. App. 645, 647(3)(a) (1997) (Courts must "give meaning to each part of the statute, and avoid constructions which result in surplusage and meaningless language."). Does the duty concern cases which are never presented for indictment or accusation? How does a prosecutor establish that she made such an individual review before declining to prosecute a case? What prosecutorial decisions are not "available under the law?"

Second, the statute adds another unclear basis for discipline, providing for discipline for "Conduct prejudicial to the administration of justice which brings the office into disrepute." O.C.G.A. § 15-18-33(h)(6). This standard has a settled meaning in the context of judicial officers, but it has no clear analogue for a prosecutor. For a judge, the phrase refers to "inappropriate actions taken in good faith by the judge acting in her judicial capacity, but which may appear to be unjudicial and harmful to the public's esteem of the judiciary," as well as bad-faith activities outside the official capacity. *Inquiry Concerning Coomer*, 315 Ga. 841, 859 (2023). While judges are expected to abide by longstanding norms of judicial conduct, it is not clear what those norms would entail for prosecutors, apart from those articulated in State Bar rules. *See* Ga. R. Prof. Cond. 3.8 ("Special Responsibilities of the Prosecutor"). Accordingly, to the extent that this provision addresses official-capacity activities of a prosecutor, there is no way for a district attorney to know what behavior the PAQC would consider inappropriate for his role. The origins of this law reflect fundamentally political disagreements about what exercises of prosecutorial discretion are "prejudicial to the administration of justice," which is why that decision is best left to the electorate. The presence of a clear definition in a different context does not establish clarity here. *See Wollschlaeger*, 848 F.3d at 1321-22 (holding that a prohibition on "unnecessary harassment" is vague, notwithstanding clear understandings of "harassment").

Third, although the limitations on complaints in subsection (i) should shed light on the scope of these standards, they instead contribute to the ambiguity. Subsection (i)(2)(D) allows for complaints about prosecutorial decisions which are "based on . . . [f]actors that are completely unrelated to the duties of prosecution." There is no established list of factors that are "related to the duties of prosecution." Would a resource-allocation question pass muster? A philosophical difference regarding public safety?

Subsection (i)(2)(E) also fails to offer clear guidance. As noted above, the subsection provides for complaints where there is plausible evidence of "[a] stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute." It is not clear what it means for a prosecutor to be "required by law to prosecute" an offense. Would DA Adams's good-faith determination that the adultery statute is unconstitutional run afoul of this provision? *See* Adams Aff. ¶¶ 38-39 and Att. C. Moreover, how would a policy "demonstrate" a categorical refusal to prosecute certain offenses, particularly if the alleged policy is unwritten? Would this apply to the guidelines for pretrial diversion, which the legislature explicitly required at O.C.G.A. § 15-18-80? Because these ambiguities touch on protected speech, the prohibitions must satisfy "'a more stringent vagueness test,'" *Wollschlaeger*, 848 F.3d at 1320 (quoting *Vill. of Hoffman Estates v. The Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982)). But the stated-policy provision cannot satisfy the ordinary vagueness test, let alone the stricter variety.

These ambiguities effectively remove district attorneys' broad discretion, handing unfettered discretion to the PAQC instead. Because the standards governing its disciplinary activity are undefined, the PAQC may investigate, discipline, and even remove and disqualify a prosecutor based on nearly any decision that leads to a less punitive result whenever the commission considers the prosecutor's actions inappropriate. In other words, the statute "encourage[s] arbitrary enforcement." The threat of arbitrary enforcement has already surfaced, as multiple state legislators and supporters of SB 92 have called on the PAQC to immediately investigate and discipline Fulton County DA Fani Willis. *See* Boston Aff. ¶ 47 & Att. F.

B. <u>Plaintiffs will Suffer Irreparable Injury if SB 92 is Permitted to Take Full Effect.</u>

Plaintiffs satisfy the separate consideration for an interlocutory injunction, as there is a "substantial threat" that Plaintiffs will "suffer irreparable injury" absent an injunction. *SRB Inv.*

Services, 289 Ga. at 5. SB 92 interferes with district attorneys' ability to run their offices effectively and chills them from expressing their prosecutorial philosophies. Even if the law takes only temporary effect until a final judgment declaring it to be unconstitutional, the months of altered prosecutorial approach and stifled communication cannot be returned.

First, Plaintiffs are threatened with immediate and irreversible punishment under SB 92. The law hangs a sword of Damocles over the head of each district attorney, threatening severe disciplinary action if they cross the invisible lines of the PAQC in exercising their discretion.

Second, Plaintiffs are harmed by their lack of freedom to exercise prosecutorial discretion, a fundamental authority in their offices. By imposing the prospect of discipline for decisions not to prosecute, to divert, or to take a lenient approach, the law discourages Plaintiffs and their staff from fully exercising their discretion. Because the PAQC's investigation and review are not limited by clear standards, Plaintiffs' staff are likely to "steer far wider of the unlawful zone," *Keyishian*, 385 U.S. at 604, contrary to the approaches that Plaintiffs were elected to pursue. *Cf. Cobell v. Norton*, 334 F.3d 1128, 1140-43 (D.C. Cir. 2003) (finding sufficient irreparable injury to justify mandamus to correct "violat[ion] of the separation of powers").

Third, the stated-policy provision interferes with Plaintiffs' ability to clearly communicate their priorities to staff in their offices, whether through formal policies and training or less formal guidance and feedback. *See* Boston Aff. ¶ 52; Adams Aff. ¶ 41; Williams Aff. ¶¶ 26-30. Meanwhile, the threat of discipline for violating the individual-review provision, for its part, will lead Plaintiffs to devote additional time to cases that do not merit prosecution, diverting resources from serious violent felony prosecutions and other matters. *See* Boston Aff. ¶ 44; Adams Aff. ¶ 44; Williams Aff. ¶ 44; Broady Aff. ¶ 18.

Fourth, Plaintiffs are irreparably injured by the stated-policy provision's infringement on free-speech rights. Even while facing a challenger in an upcoming election, DA Williams hesitates to explain his prosecutorial philosophy in detail in community meetings and to the media. Williams Aff. ¶ 32. Although DA Broady has prioritized transparency to build community trust, he now intends to limit the information he shares with the public. Broady Aff. ¶¶ 20-21. "[T]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury." *Great Am. Dream, Inc., v. DeKalb Cnty*, 290 Ga. 749, 752 (2012) (quoting *Elrod v. Burns*, 427 U.S. 347, 373 (1976)).

C. The Balance of Equities Favors an Injunction, as Defendants Will Not Suffer Injury From an Interlocutory Injunction Preserving the Status Quo.

The irreparable injury described above far outweighs the nonexistent injury to Defendants from delaying the operation of the PAQC. SB 92's imposition of statewide, partisan control over prosecutorial discretion is unprecedented under Georgia law. However, there are several existing mechanisms under existing law to address prosecutorial misconduct: State Bar discipline, including for violation of Rule 3.8's special responsibilities of the prosecutor; impeachment, pursuant to O.C.G.A. § 15-18-36; and recall, *see* O.C.G.A. § 21-4-1, *et. seq*. Of course, the ultimate check on prosecutorial misconduct is the electorate. With these alternative avenues in place, an injunction will not meaningfully harm Defendants.

D. If SB 92 Takes Full Effect, the Interference with Prosecutorial Discretion Will Harm Other Participants in the Criminal-Justice System and the Public Interest.

Finally, an interlocutory injunction would serve the public interest. Generally, "the public interest is served when constitutional rights are protected." *Democratic Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1327 (11th Cir. 2019); *see also Unified Gov't of Athens-Clarke Cnty. v. Stiles Apartments, Inc.*, 290 Ga. 740, 742 (2012) (affirming a finding that a "governmental entity

depriving a private entity of its property without the due process of law can rarely, if ever, be in the public interest").

But SB 92 also threatens to harm the public interest in more specific ways, negatively affecting various third parties within and outside the criminal justice system. Advocates for increased pretrial diversion and other reforms have already seen a new reluctance from certain prosecutors, owing to SB 92's threat of discipline and removal. Guthrie-Papy Aff. ¶¶ 28-32; Grant Aff. ¶¶ 22-25 If the PAQC is permitted to further deter the exercise of prosecutorial discretion, including through policies like DA Boston's COVID-19 Backlog policy, the consequences would be felt primarily by those criminal defendants who must wait longer, sometimes in jail, for a resolution of their case. Guertin Aff. ¶ 10. But it would also impair the ability of the criminal defense bar to adequately meet its responsibilities, and clog the machinery of the criminal courts. *See* Guertin Aff. ¶¶ 8-9.

Disciplinary and removal action by the PAQC also threatens the core Georgia value of self-government, as exercised by local voters through the franchise. In each Judicial Circuit, voters select a district attorney to pursue that community's vision of public safety and justice. *See, e.g.,* Booker Aff. ¶¶ 16-17.

Because SB 92 threatens to destabilize each of these interests, an interlocutory injunction to preserve the status quo would serve the public interest.

IV. CONCLUSION AND PRAYER FOR RELIEF

For the reasons stated above, Plaintiffs respectfully request that this court issue an interlocutory injunction, against the official-capacity defendants as to the federal claims and the individual-capacity defendants as to the state claims, preventing the PAQC from conducting an investigation or disciplinary proceedings during the pendency of this litigation.

Respectfully submitted this 24th day of August, 2023.

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EXHIBIT LIST

EXHIBIT 1

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

AFFIDAVIT OF SHERRY BOSTON

I, SHERRY BOSTON, state as follows:

1. I reside in Atlanta, Georgia, in DeKalb County. I am over 18 years old.
2. I currently serve as District Attorney for the Stone Mountain Judicial Circuit. I have served in this role since 2017, having been elected in 2016 and re-elected in 2020.
3. The Stone Mountain Judicial Circuit District Attorney represents the state in felony and juvenile cases that arise within DeKalb County.
4. Before I became District Attorney, I served as DeKalb County Solicitor General for 6 years. The DeKalb County Solicitor General prosecutes misdemeanor crimes within the county. I also served as a municipal court judge.
5. I am past chair of the Disciplinary Board and current member of the Board of Governors for the State Bar of Georgia and a council member of the Prosecuting Attorneys Council of Georgia.

6. My job as prosecutor is to represent the people of DeKalb County, in pursuing justice and seeking public safety for our communities. I seek to keep in mind the long-term effects of my choices. My office seeks incarceration regularly, when appropriate. But because incarceration necessarily destabilizes a person's work and family life, it can sometimes be counterproductive to the goal of promoting public safety.
7. Under my leadership, the Stone Mountain Judicial Circuit has the highest murder-conviction rate in the Greater Metro Atlanta area.

Internal Guidance, Training, and Policies

8. My office has a full-time staff of 266 employees and 94 assistant district attorneys.
9. Each year, more than 4,500 felony cases are opened in the Circuit. And I inherited a backlog of several thousand drug-related cases when I took office in 2017.
10. Because of the size of my office and its caseload, I cannot individually participate in every decision in every case. My line prosecutors are responsible for exercising discretion over many decisions, sometimes with approval by a department head. While I generally supervise the approach to all cases, I am certain to be involved only in the most serious decisions, such as a decision not to prosecute a murder charge or how to approach a substantial multi-defendant conspiracy.
11. Even as I rely on the discretion of each of my assistant district attorneys, it is essential that the office work consistently and according to the prosecutorial philosophy that DeKalb County voters elected me to pursue. Accordingly, I provide guidance on the principles of that prosecutorial approach in several ways.

12. My office's mission and vision statement lay out the general principles for my office's operation. A true and accurate copy of the mission and vision statements is attached as Attachment A.
13. I have also established a Bill of Values for the office, to guide prosecutors' actions. A true and accurate copy of the Bill of Values is attached as Attachment B.
14. Among the Values is a commitment to indict only those cases that can be proved beyond a reasonable doubt through admissible evidence.
15. The Values also enshrine a commitment to promote public safety, to attend to victims' needs and to divert cases from the criminal justice system "where treatment, accountability, and safety for all parties can be accomplished."
16. When new staff are hired into my office, these mission and vision statements and Bill of Values are a central part of the training and onboarding process.
17. Alongside these guiding documents, I regularly discuss my approach to prosecution with my supervisors and other staff, to ensure consistent approaches throughout the office and guide them in addressing specific circumstances.

Pretrial Diversion

18. In April 2017, I established a pretrial diversion program, pursuant to O.C.G.A. § 15-18-80.
19. Pre-trial diversion is consistent with my goal to promote public safety, rather than a blindly punitive approach. For many defendants, thoughtful services and intervention can lead them to change their behavior. In my experience, pre-trial diversion resolves cases faster and more economically than traditional adjudication, and it avoids the negative consequences of job loss and family disruption that may flow from incarceration.

20. Consistent with the requirements of the statute, I promulgated a written set of guidelines for participation in the program. A true and accurate copy of the current Pre-Trial Diversion Guidelines is attached as Attachment C.

21. Alongside the general Pre-Trial Diversion program, I have created a specialized program to address recidivism among young adults called Stopping Trends of Repeat Incarceration through Diversion and Education, or STRIDE.

22. The STRIDE program, which just graduated its third cohort, provides extensive programming for young people who have committed more serious offenses or are at higher risk to recidivate than can be appropriately addressed in the general diversion program. The STRIDE program is a more intense accountability program than our general diversion program.

23. A true and accurate copy of the STRIDE Program Guidelines is attached as Attachment D.

24. The STRIDE program incorporates accountability measures, community service, counseling, and connections to work or education, to provide justice to victims and put participants on a sustainable path to law-abiding participation in the community.

COVID-19 Backlog Policy

25. COVID-19 caused particular challenges for the criminal-justice system in DeKalb County and elsewhere.

26. Courthouses were closed and grand juries were suspended for many months. During that time, cases could not move forward to indictment or adjudication. Neither victims nor defendants were able to obtain a resolution in the cases affecting them.

27. The delayed indictments and adjudications added to the existing backlog of cases that I had inherited upon taking office.

28. Moreover, with my staff working remotely, it was more difficult for line prosecutors to consult informally with their supervisors and fellow colleagues about pending cases. Clearer directives were necessary to ensure consistent and fair treatment for all people with whom my office came into contact.

29. I worked with my staff to develop a written policy to address the backlog of cases created by COVID-19. My staff conducted extensive research into best practices for public safety and public-health understanding of substance use disorder.

30. When I announced the policy, I also distributed it to various stakeholders, including local police departments, the sheriff's office, judges, and the defense bar. None of the stakeholders have expressed opposition to this policy.

31. Since initially adopting the policy, I have refined and continued it, most recently in June 2022.

32. A true and accurate copy of the current version of the COVID-19 Backlog Policy is attached as Attachment E.

33. The policy instructs Assistant District Attorneys to decline to present a case to the grand jury or *nolle pros* a case that has already been subject to indictment if the defendant has been charged only with an offense covered under the policy's list of low-level felonies.

34. In dismissing such cases, ADAs are instructed to include the following language in the *nolle pros* or documentation of the decision not to present to the grand jury: "While there was probable cause for the arrest, the State declines to prosecute."

35. Before an ADA may decline to prosecute a case under the COVID-19 policy, the office must provide notice to any victims, or make at least three attempts to do so, in compliance with Marsy's Law and the Georgia Crime Victims Bill of Rights.
36. The COVID-19 policy also expands the categories of charges for which pretrial diversion is available.
37. Since the COVID-19 pandemic, I have also altered the diversion program by waiving any requirement for participants to pay for participation in the program.

Public Statements

38. I see public communication as an essential part of my role as District Attorney. By expressing my prosecutorial philosophy in community meetings, while interacting with individual citizens, and to the media, I can ensure that my community understands the approach that I take to justice and public safety.
39. During my first campaign for District Attorney, I was frequently asked about my approach to real and hypothetical criminal activity. While I am careful not to address any existing case, it was often useful to discuss illustrative hypotheticals to explain my philosophy. Through these discussions, voters could learn what they would be choosing if they elected me.
40. I continue to attend community meetings regularly, where I continue to be asked about my approach, including to hypothetical criminal activity.
41. I have also joined with other prosecutors from around the country to make public statements about several controversial issues. Some of these issues are related to my prosecutorial approach, including commitments not to prosecute crimes related to abortion or gender-affirming care. I have separately expressed support of "sanctuary"

policies and limits on homicide prosecutions in cases involving drug overdose deaths, as well as opposition to prosecution of distribution of food and water in connection with voting.

42. I have also repeatedly stated, since my time as Solicitor General of DeKalb County, that I will not prosecute certain crimes that relate to private sexual activity, such as consensual sodomy, O.C.G.A. § 16-6-2(a)(1); fornication, O.C.G.A. § 16-6-18; and adultery, O.C.G.A. § 16-6-19.

SB 92

43. SB 92 will interfere with my ability to carry out my duties as District Attorney, serve the people of DeKalb County, and operate my office.

44. Although my office seeks to thoughtfully approach every case that comes before us, I do not know what is required to satisfy the novel individual-review duty in O.C.G.A. § 15-18-32(h)(6). Further documentation of the review of cases that we choose not to pursue would be burdensome and take resources away from prosecuting violent and other high-priority crimes.

45. The law contains several unclear and undefined provisions. I do not know what "conduct prejudicial to the administration of justice" means for a prosecutor, nor do I know what factors are "related to the duties of prosecution."

46. It is also not clear to me what would constitute a "stated policy, written or otherwise, which demonstrates that the district attorney or solicitor-general categorically refuses to prosecute any offense or offenses of which he or she is required by law to prosecute."

47. It appears that some actors already seek to make use of SB 92's vague provisions to target political enemies, without respect for wrongdoing. This week, two members of the

Georgia Senate made public statements calling for the Prosecuting Attorneys Qualifications Commission to investigate and discipline DA Fani Willis as retaliation for pursuing an indictment of former President Donald Trump and his associates. These statements reinforce my concerns that the lack of clear standards for discipline in SB 92 allow the PAQC to become a tool for unprincipled attacks on political enemies.

48. A true and accurate copy of the senators' statements is attached as Attachment F.

49. I have concern that some of my policies and approaches could be interpreted as a "stated policy" that could give rise to a complaint, investigation, and discipline. Specifically, the commitment in my Bill of Values to prosecute only those cases where there is proof beyond a reasonable doubt; my pretrial diversion guidelines; and my COVID-19 Backlog Policy could all be interpreted to meet this definition.

50. My statements to the public in community meetings and other fora could also be interpreted as "stated policies." I no longer am as willing to discuss hypothetical cases, for fear they will meet this definition.

51. By causing me to hesitate before discussing my prosecutorial philosophy, SB 92 interferes with voters' ability to learn about and evaluate my approach to prosecution.

52. Moreover, the "stated policy" provision interferes with my ability to communicate freely with my staff about my prosecutorial philosophy, including through the Bill of Values and COVID-19 policy, making it more difficult to ensure consistent approaches across the office to all criminal defendants.

53. I am concerned that the prospect of a lengthy investigation and disciplinary proceeding for an exercise of discretion will deter my staff from exercising their discretion consistent with my philosophy.

54. The clear disadvantages of SB 92 are particularly baffling to me because the law, and the commission it creates, are unnecessary.

55. As a former member of the Disciplinary Committee of the State Bar, I supported the adoption of a robust rule on the special responsibilities of the prosecutor. I also saw the strength of Bar discipline as an existing check on prosecutorial misconduct, alongside other tools and (most importantly) the ballot box.

I declare under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Sherry Boston

Sherry Boston

DATED: August 23rd, 2023

SIGNED AND SWORN TO BEFORE ME ON THIS 23rd DAY OF AUGUST, 2023

JB Delk

NOTARY PUBLIC

My commission expires:

J B DELK
NOTARY PUBLIC
MY COMMISSION EXPIRES
MAY 09, 2025
HENRY COUNTY, GEORGIA

ATTACHMENT A

SHERRY BOSTON, DISTRICT ATTORNEY
Office of the DeKalb County District Attorney • Stone Mountain Judicial Circuit
556 N McDonough Street • Suite 700 • Decatur, GA 30030 • Phone: 404-371-2561

MISSION

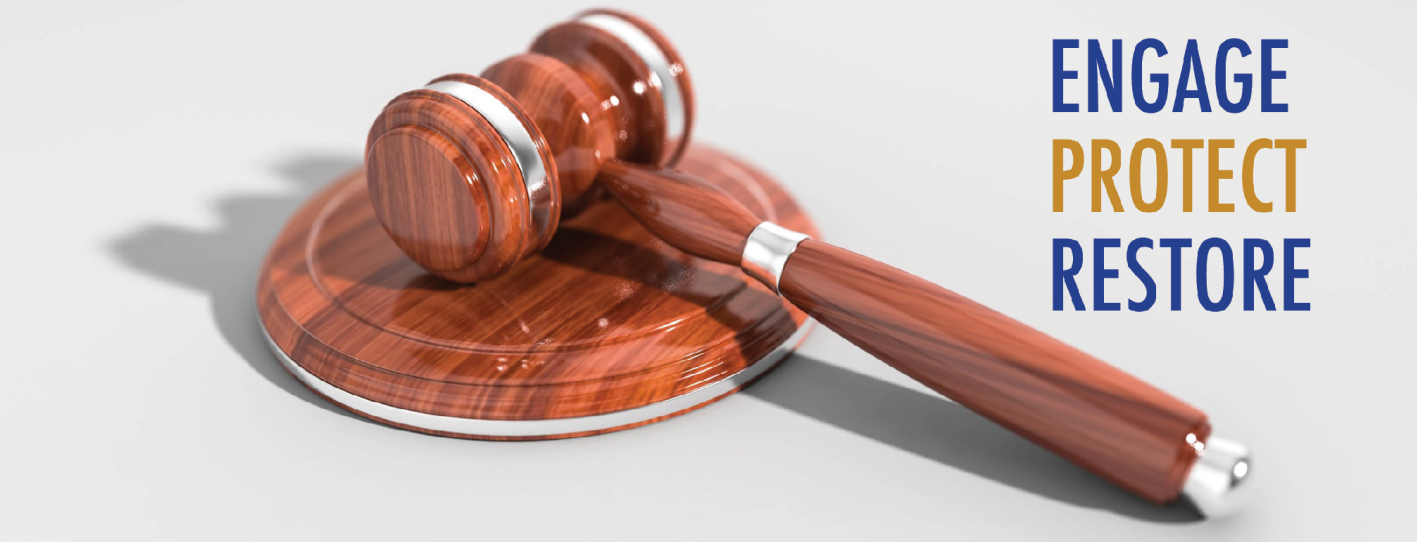
The mission of the Office of the DeKalb County District Attorney is to safeguard our community through vigorous and fair prosecution of felony offenses occurring within the Stone Mountain Judicial Circuit.

We seek to accomplish this goal by preserving the dignity and best interests of our victims while using smart prosecution strategies that balance offender accountability with prevention, intervention, and restorative justice.

We believe in the power of engagement and in building relationships with community partners for the betterment of DeKalb County.

VISION

We endeavor to restore faith in the criminal justice system and disrupt cycles of violence, trauma, and recidivism in our pursuit of public safety and justice.



ENGAGE
PROTECT
RESTORE

ATTACHMENT B

OFFICE OF THE DEKALB COUNTY DISTRICT ATTORNEY

BILL OF VALUES

The mission of the Office of the DeKalb County District Attorney is to safeguard our community through vigorous and fair prosecution of felony offenses occurring within the Stone Mountain Judicial Circuit. We believe it is imperative to prioritize public safety at every decision point of the prosecution process. We strive to fulfill this mission by holding firm to the following values in every case:

1. We only charge cases when there is sufficient evidence to prove the case beyond a reasonable doubt solely based on the admissible evidence.

2. We help crime survivors heal by striving to meet their stated needs, even when we do not have sufficient evidence to pursue a case.

3. We assess every alternative solution before charging children as adults.

4. We make recommendations for conditions of release, bond, or sentences based on the facts, offense, criminal history, and from a public safety standpoint.

5. As a public safety agency, our priority is to protect victims, survivors, and the community at large. We recognize that incarceration, probation, and convictions can increase public safety. However, we also recognize that incarceration, probation, and convictions can impose harms and collateral consequences that undermine public safety. We seek to navigate these two realities and look for solutions that increase safety while also minimizing harm.

6. We strive to divert people from the criminal justice system where treatment, accountability, and safety for all involved parties can be accomplished.

7. We believe that aligning the interests of the victim, community safety, and community needs are of utmost importance. When these interests cannot be aligned, we strive to move forward with fairness, impartiality, and justice.

8. We do not penalize individuals for asserting their constitutional rights, including their right to a jury trial. Instead, we make plea offers and sentencing recommendations based on the facts of the case, a victim's needs and input, accountability, community safety, and recognition that people can be rehabilitated.

9. In accordance with our ethical obligations, we are transparent and engage in good faith with defense counsel and the Court regarding timely discovery, exculpatory and mitigating evidence, plea offers, trial, and sentencing recommendations.

10. We recognize the importance of victims being engaged in the criminal justice process. We strive to provide victims reasonable, accurate, and timely notice of any scheduled court proceedings; reasonable, accurate, and timely notice of the arrest, release, or escape of the accused; and the opportunity to be heard at any scheduled court proceedings involving the release, plea, or sentencing of the accused.

Adopted: 6/23/2022

ENGAGE. PROTECT. RESTORE.

ATTACHMENT C

DEKALB COUNTY DISTRICT ATTORNEY'S

PRE-TRIAL DIVERSION (PTD) GUIDELINES

I. PROGRAM PURPOSE AND DESCRIPTION

The DeKalb County District Attorney's Office Pre-Trial Diversion ("hereinafter PTD") Program was created pursuant to O.C.G.A. §15-18-80. It serves as a diversion program for offenders with little to no criminal history. Participants in PTD are required to complete community service, receive counseling that is specifically targeted to address the behaviors which led to their criminal offense, have "stay away" and "do not return" conditions, voluntarily pay restitution to crime victims, and attend classes designed to have a deterrent effect to criminal behavior.

The DeKalb County District Attorney's Office recognizes that individuals with little to no criminal history who are facing non-violent felony charges may benefit from an opportunity to make restitution to and reconcile with the community by taking restorative action and receiving counseling addressing and preventing further involvement in the criminal justice system. The District Attorney understands that early intervention in these cases is important in order for offenders to engage in preventative counseling at the earliest possible time. Therefore this Program is offered to offenders post-arrest, but prior to formal charges or accusation. The goal of early intervention is to prevent further occurrences of crime which will ultimately serve the goal of creating a safer DeKalb County. The District Attorney's Office is committed to working in partnership with community agencies in facilitating an efficient and effective PTD Program.

II. PROGRAM ELIGIBILITY

Pursuant to O.C.G.A. §15-18-80, the District Attorney's Office determines which persons are eligible to participate in the PTD Program in accordance with the criteria below.

A. PARTICIPANT ELIGIBLITY - In order to be considered for PTD, a participant must meet the following minimum criteria:

1. Has been arrested on a felony warrant in DeKalb County;
2. Faces an eligible pending offense in the District Attorney's Office;
3. Possesses little to no criminal history;
4. Is without prior felony convictions; and
5. Has no prior participation in any pretrial diversion program in this or any other jurisdiction.

B. VICTIM NOTIFICATION AND RESTITUTION– In accordance with the Victim's Bill of Rights, victims shall receive notification of the intent to refer any case to pretrial diversion prior to any offer being extended to the Defendant. The District Attorney's Office shall offer the victim the opportunity to express the victim's

opinion on the disposition of an accused's case, including the views of the victim regarding participation in pretrial or post-conviction programs. O.C.G.A. §17-17-11.

Appropriate restitution shall be a part of all Pretrial Diversion Agreements. A participant's objective ability to pay restitution within the time period of PTD should be considered prior to any offer to participate in PTD. Specific participant's subjective ability to pay is not an eligibility factor, but may prevent a participant from accepting PTD treatment.

C. **OFFENSES THAT ARE ELIGIBLE INCLUDE BUT ARE NOT LIMITED TO:**

16-7-23	Criminal Damage to Property
16-7-24	Interference with Government Property
16-9-2…9	Theft by Taking, Theft by Deception, Theft of Service, Theft of Mislaid Property, Theft by Receiving Stolen Property (excluding firearms or vehicles)
16-8-40	Robbery by Sudden Snatching – must have prior approval of DA or Chief Assistant
16-8-14	Theft by Shoplifting
16-8-15	Conversion of Payments for Real Property Improvements
16-8-21	Removal/Abandonment of Shopping Carts
16-8-62	Reproduction…of Recorded Materials
16-9-1	Forgery
16-9-20	Deposit Account Fraud
16-9-31	Financial Transaction Card Theft
16-9-31	Financial Transaction Card Fraud
16-9-35	Criminal Receipt of Goods Fraudulently Obtained
16-9-37	Unauthorized Use of Financial Transaction Card
16-9-70	Criminal Use of an Article with Altered ID Mark (excluding firearms or vehicles)
16-9-93.1	Misleading use of Individual Name/Trade Name/Trademark
16-10-20	False Statements (excluding false statements related to felony cases)
16-13-30	Drug possession cases – where participant does not meet admission criteria for Drug Court after clinical evaluation prepared by licensed clinician indicates no addiction/dependence. (Not in lieu of Drug Court, where appropriate.)

All cases are subject to approval by the District Attorney or her designee, whether or not included on the above list.

Upon meeting the initial minimum threshold for diversionary treatment, the reviewing personnel shall make a recommendation regarding for or against diversionary treatment based on the facts and circumstances of the individual case, considering any of which may be mitigating or aggravating in nature, and considering the victim's response upon notification.

III. PROGRAM COST

The participant will be required to pay an administration fee of $750.00 pursuant to O.C.G.A. § 15-18-80 for participation in the PTD Program. Said fee is non-refundable. Pursuant to agreement, all funds will be collected and processed by the DeKalb County Probation Department who will distribute the funds to the Clerk of Superior Court for deposit into the DeKalb County general fund. All funds are to be paid by certified or cashiers check, money order, cash or credit (debit) card only and made out to DeKalb County State Probation.

IV. RESTITUTION

Restitution is an important part of a participant's reconciliation with the victim and the community. Therefore, where restitution exists, it shall be made part of any PTD agreement with a participant. Restitution shall include all special damages as defined by O.C.G.A. § 17-14-2, which excludes punitive damages and damages for pain and suffering, mental anguish, or loss of consortium.

Where the victim is a public corporation or governmental entity or where the offender is a juvenile, restitution may also be in the form of services ordered to be performed by the offender. OCGA §17-14-2(7). PTD agreements may allow substitution of restitution with participant's community service hours, if made part of agreement at execution. Rate of restitution shall be $8.00 per community service hour.

The Clerk of Superior Court shall collect restitution payments made by agreement of the participant and District Attorney's Office, for distribution to the victim as provided by law.

V. PROGRAM ENTRY PROCEDURES:

All cases of eligible offenses are screened for eligibility by the DeKalb County District Attorney's Office. For those cases deemed eligible, defendants are invited to attend an information session which is held every first Friday of the month at 9:00a.m. At the information session, attendees are given an opportunity to get an overview of the PTD Program and learn more about the specific terms of their proposed agreements. If accepted, the attendee must execute the PTD agreement in order to enter into the program. Included in the agreement is the date and time that the attendee will return to a compliance calendar to provide proof of completion of the agreement. Alternatively, eligible defendants with representation may come to the District Attorney's Office with appointment in advance of the PTD Information Session to review and accept their proposed Agreements.

VI. PROGRAM CONDITIONS AND DURATION:

The conditions of PTD vary based on the type of offense, the severity of the offense (based on the facts in the case file), collateral information about the participant, and the participant's criminal history. Conditions may include: community service, restitution, substance abuse treatment, and counseling or other classes tailored to the charge and facts of the case.

The duration of the Program is based upon the time needed to complete the conditions. The vast majority of the participants are able to complete the program within 90 to 180 days.

VII. PROGRAM REMOVAL PROCEDURES:

For unindicted cases, participants are given the opportunity to extend the length of time for completion of the terms of their agreements if they demonstrate a continued willingness to fulfill the conditions, but cannot in the original time allotted. In that instance, the case will be reset to allow the participant time to complete the terms of the Agreement. For unindicted cases, if the participant ultimately demonstrates an unwillingness to complete the Agreement, violates any term of the Agreement, or fails to return to provide proof of completion of the Agreement, the State will remove the participant from the Program, and return the case to the Trial Divisions for prosecution.

For indicted cases, the participant shall be informed of any decision of removal and of their right to a hearing with a Magistrate Court judge if they would like to contest their removal. They may also sign a waiver of removal hearing, including an advisement of their right to a hearing. The waiver also includes an advisement to their right to consult with an attorney, should a participant sign removal hearing waiver without counsel.

For indicted cases, any removal hearing shall be limited in scope to a determination of whether the District Attorney is in abuse of discretion in removing the participant. That is, whether the participant has completed the Agreement within the agreed time frame, or whether the participant has violated the rules and terms of the Agreement.

VIII. PROGRAM ADVANTAGES TO PARTICIPANT:

When the participant successfully completes the conditions of the PTD Agreement, the case is eligible for dismissal and may qualify for record restriction pursuant to the provisions of O.C.G.A. §35-3-37 (d).

IX. DOCKET PROCEDURES FOR INDICTED CASES

Pretrial Diversion shall be sought pre-indictment wherever possible, to retain the benefits of efficiency for the judicial system and maximize the benefit to the participant.

When indicted cases are deemed eligible for diversion in accordance with Guidelines Section II, cases shall be placed on **Administrative Dead Docket,** for a time certain, to allow for completion of the program. That time certain shall default to one year where no other circumstances dictate a longer or shorter period of time be specified. Defendants seeking Pretrial Diversion treatment on accused cases shall sign a **Waiver of Right to a Speedy Trial** demand, including statutory and constitutional claims.

ATTACHMENT D

STRIDE

Stopping Trends of Repeat Incarceration with Diversion & Education

Program Guidelines

Office of the District Attorney of DeKalb County

Version: DRAFT 4

Date: 10/114/2019

Author: Lisa M. Moultrie, Deputy Chief Assistant District Attorney
Diversion and Community Alternatives Programs

Program Goals

Program goals include:

1. Reduce Recidivism
2. Restorative Justice
3. Hold Offenders Accountable
4. Increase Community Engagement
5. Reduce the Collateral Consequences Caused by Criminal Convictions
6. Increase Public Safety
7. Administrative Efficiency/Cost Savings

Admission Criteria

The STRIDE program is meant to intervene where young adults have committed more serious offenses or are at higher risk to recidivate than those admitted to our self-directed Pretrial Diversion Program.

The program is designed to provide a structured and evidence-based community response to such crime, and allow those who offend to both reconcile with the community and the victim, and address individual needs contributing to the decision to commit crime.

Therefore the following will be considered prior to the admission of a defendant into STRIDE:

1. Nature & Circumstances of the Pending Charge

   Excluded charges will include those of intimate partner violence and sex offenses, as there will be no programming designed for intervention in these types of offenses, and we do not wish to put victims and the community at further or greater harm.

   Types of Allowable Charges include those eligible for Pretrial Diversion Program, and those charges below:

   - § 16-5-21. Aggravated assault (where no serious injury occurred to victim and victim consents to admission)
   - § 16-7-1. Burglary 2nd Degree, (with consent of the victim)
   - § 16-7-2. Smash and grab burglary; "retail establishment" defined
   - § 16-8-18. Entering automobile or other motor vehicle with intent to commit theft or felony
   - Theft by Taking; Theft by Receiving (including auto theft)
   - VGCSA/Possession with Intent to Distribute § 16-13-30. Purchase, possession, manufacture, distribution, or sale of

controlled substances or marijuana; penalties, including § 16-13-32.4. Manufacturing, distributing, dispensing, or possessing controlled substances in, on, or near public or private schools
- § 16-8-40. Robbery
- § 16-8-41. ~~Armed robbery~~; robbery by intimidation; taking controlled substance from pharmacy in course of committing offense (where **no firearm** or insinuation/replica of firearm, no serious injury occurs to victim)
- § 16-11-132. Possession of handgun by person under the age of 18 years
- § 16-11-127.1. Carrying weapons within school safety zones, at school functions, or on a bus or other transportation furnished by a school
- Defendant's with multiple cases pending, where offenses would fall into Pretrial Diversion guidelines.

2. Prior Criminal History and Nature & Circumstances of Those Offenses - Any prior history of the above listed offenses, including offenses that are excluded from consideration for admission, will exclude a participant from participating in STRIDE. Prior history of includes juvenile history and known prior bad acts, whether or not an arrest for that act appears on the applicant's criminal history.
3. Pendency of Other Proceedings – STRIDE is a pre-filing diversion program. Any pendency of charges which may result in a custodial period preventing participation in the program, including probation revocation proceedings, may exclude an applicant from participation.
4. Pendency of Diversion or a Prior Diversion/Intervention Program – if an applicant has prior participation in a diversion program of similar programming and model to STRIDE, that applicant may be excluded from participation.
5. Individual Characteristics of the Offender
    - Only Youthful Offenders Admitted – those between the ages of 17 and 24 years of age.
    - Applicants must be DeKalb County residents to participate in STRIDE.
    - Youth is disconnected from school or work
    - Youth has previous contact with the juvenile justice system
    - Known Gang Affiliation – may prohibit participation in STRIDE
6. Residency Requirement – partnership with WorkSource requires that participants in this program be DeKalb County residents.

Assessment

Upon admission an assessment of current educational and vocational level will be conducted, with the intent to form an educational or vocational plan. A risk and needs assessment will be conducted for service to the participant and program evaluation purposes.

Needs assessment is necessary to refer to both physical and health needs, and to connect participants to available social services through DeKalb County Providers. DeKalb County residency is required to ensure all applicants are eligible for services through DeKalb County partners.

Upon completion of program, assessment will be given to determine success measures of participant, such as increased education, employment, increased stability and improved health, improved family and community relationships, engagement in positive community activity and positive pastimes/hobbies, and completed restorative justice provided to crime victims and the community.

Victim Services

In compliance with the Victim's Bill of Rights and Marcy's Law, all victims will be notified of the intent to offer the STRIDE program to a defendant and afforded an opportunity to express their wishes for the case, express an opinion regarding the terms, and provide any relevant restitution information PRIOR to the program offer to the defendant. In the case of a violent crime, victim permission will be of utmost importance during the screening of potential participants.

With regard to the terms, victims may request restitution, may request to give a written statement to the participant, and may request to participate in a moderated restorative justice circle with the participant and community members.

Program Components

1) Position Youthful Offender (YO) to become more productive, successful citizens (Education/Work)
    a. GED
    b. Technical School
    c. College
    d. DeKalb WorkSource –partner in programming, will provide workforce education, education and career planning, and work experiences by admitting participants in their HYPE youth program.
2) Connect YO to the community/purpose bigger than themselves (Service)
    a. Community Service – Hands on Atlanta assisting in connecting our group with group community service opportunities in our community.
    b. Civic Observation Activity – Council meeting, School board meeting, Legislative session day or legislative committee meeting. Know Your Rights panel, voter registration and drives
    c. Pro-social Activity – District Attorney team will solicit opportunities for participants to be able to learn more about hobbies, physical activities, and community/sporting events at low/no cost to participants.
3) Disrupt thinking patterns/emotional responses so that in the future YO will make a different choice (Counseling)
    a. Cognitive Behavioral Counseling
    b. Anti-recidivism counseling
    c. Literacy and Reading Component
4) YO participates in Restoration efforts for victim and community so that YO can move forward (Accountability)
    a. Restitution
    b. Apology Letters
    c. Restorative Justice Circles
    d. Supervised attendance at AA/NA session (drug dealing)
5) Motivate YO to be contributors (Motivation)
    a. Inspirational Speakers, Re-entering citizens
    b. Mentorship opportunities through RED, Inc.

Length of Program

Participation in program will be limited to 18 months. The first 14 months to be used for programming, and the remainder of the months may be used if participant needs additional time to complete the program. Participants will be monitored to a lesser extent in the remaining months, and will be able to participate in a graduation event at the end of the 18 month period.

Partnerships

WorkSource Development – primary partner for the Education/Work component of the program. WorkSource DeKalb has funding available to assist participants in creating an educational/vocational plan, assistance in physical needs to enable participants to be successful for the plan – such as assistance with transportation, work appropriate clothing, or referral to other government services. WorkSource will allow our participants to enroll in popular HYPE workforce program for youth with educational components and work experiences.

American Alternative Court Services - Counseling Provider – administering Thinking for a Change (T4C) classes. Also available for further counseling needs of participants if mental health diagnosis or substance abuse disorder is an obstacle for participant.

Hands On Atlanta – Organized Community Service Days – will assist in locating service projects with non-profits willing to accept our supervised youth in group community service project.

RED, Inc. – Anti-recidivism nonprofit organization, providing Motivational Programming, Program Support, Mentorship Opportunities.

Acivilate – compensated software provider for participant accountability tool. Participants will use **Pokket** software product to report progress, organize requirements, and access services in the community.

DeKalb Community Service Board – for warm referrals for drug/mental health treatment when needed. (not formal partner in program, but works with us in referrals for qualifying individuals)

YMCA – Future partner for fitness/wellness?

Referral Mechanism

Cases may be referred from Pre-Indictment Unit, Victim Advocates, Investigators, Paralegals, or Attorneys pursuant to the published guidelines. Any referral outside of guidelines must be approved by Deputy Chief or by Management Team. File is to be sent to DCAP Legal Assistant, for coding and statistics, reviewed by an attorney for eligibility, and defendant & defense attorney will be notified of application procedure and deadlines.

Referral of cases pre-indictment is preferred.

Case Management/Monitoring Compliance

A member of the District Attorney's office will monitor compliance with program terms. Program participants will self-report their progress to case manager through accountability tool. We will be utilizing the **Pokket** program by **Acivilate**. This program allows participants to organize their requirements, paperwork, and schedule, as well as self-check in at required participation points, communicate with their case manager, and seek referrals for social services in the community. It allows autonomy in personal goal setting and accountability to those goals. The program automatically reports failures to attend required sessions or activities to case manager, to allow for rapid follow up with participants.

Staffing will be calendared biweekly, to talk about participant progress as well as discussion of planned programming and logistics.

Non-compliance with terms will be met as quickly as possible with agreed upon sanctions, forming written sanction agreements with participants who wish to remain in the program from a sanction matrix, until and unless it becomes apparent that a participant will not be able to complete the program requirements within the time of the program, or the participant elects to resign from the program.

Participant experience will be representative of typical employment experience, with progressive counseling and discipline occurring as it does in the workplace. Documentation of disciplinary interactions will be maintained in the file and in participant's Pokket account.

Sanction Conduct	1st	2nd	3rd	NOTES:
Failure to Meet with Case Manager	2 meetings/month	2 meetings/month	Termination	
Testing Positive for Drugs after Cause for Testing	Drug Eval/Tx, at participant's cost, or referral to Community Service Board for treatment.	In treatment – consider increased testing, improvement plan. Not in treatment- Termination	In treatment – consult with provider for remedial measure.	
Failure to comply with WorkSource Development programming and individual career plan.	Written admonition, with performance improvement plan.	If removed from WorkSource program – termination.		

Failure to attend Community Service Days	Written admonition, with makeup plan.			
Failing to attend programming	Verbal Admonishment and discussion of reason/obstacle- with view toward problem solving.	If not explicitly excused, written admonition with sanction to meet reason. i.e. community service/essay/requirement to attend additional counseling/require to make up session at next offering.		
Late for programming	Stay until end, verbal apology to all parties.	Written essay re: respect for the time of others.		
New Offense after admission	Potential termination, based upon severity and nature of new arrest.			
Submitting Fraudulent Documentation of work, school, community service, or other required documentation.	Potential Termination – as dishonesty with the program creates significant barriers for continued participation.			

Measures of Success

While graduation from and completion of the STRIDE program will require completion of:

1) WorkSource plan of participation;
2) Completion of Course of Counselling;
3) Completion of Community Service Requirement;
4) Completion of Literacy Requirement;
5) Attendance during Scheduled Motivational/Educational/Civic Involvement Workshops/Events;
6) Completion of Restorative Justice Element;
7) No further offenses/arrests,

Other success factors should be tracked and reported. These include, but are not limited to:

- Attaining higher level of education.
- Attaining vocational or technical certifications.
- Completion of any service projects.
- Attaining and successfully completing internships.
- Attaining new job or promotion within workplace.
- Attaining measures of independence, such as independent living, means of transportation, savings and investment plan, entrepreneurial endeavours.
- Receipt of any award or recognition within program or workplace
- Repairing family relationships
- Legitimizing children and/or staying current on child support.
- Connecting with a mentor
- Gaining sobriety or mental health treatment compliance
- Recognition for service to their community

Legal Outcomes

At what stage was Diversion Offer Made?	Pre-Filing		Post-Filing	
Were Conditions Successfully Completed?	Yes	No	Yes	No
Was a Plea or Admission Required?	No plea, admissions subject to confidentiality agreement		No, Case to be placed on Administrative Dead Docket, admissions subject to confidentiality agreement	
Legal Result	Charges Not Filed	Charges Filed	Nolle Prosequi entered	Removal from Dead Docket, case proceeds

Record Restriction Occurs automatically as dispositions are filed with the Clerk of Court. Clerk of Court policy removes external access to listing of offense on public internet portal.

Motions to Seal should be consented to upon change of Clerk Policy regarding restricting public access, or upon request of participant with no further arrest in 3 years.

ATTACHMENT E

District Attorney's Office Policy Regarding Case Backlog Due to the COVID-19 Pandemic

On March 14, 2020, the Georgia Supreme Court pursuant to O.C.G.A. § 38-3-6 declared a Statewide Judicial Emergency in response to the COVID-19 pandemic. As a result, in-person hearings, grand jury proceedings, and jury trials were suspended throughout the State of Georgia, resulting in an unprecedented case backlog in the criminal court system and in prosecutors' offices. In an effort to reduce the backlog of undisposed cases; to create alternative means of resolving cases in a manner that does not impact public safety; to engage in effective case management; and to track the impact of these changes through data collection and analysis of crime trends and the rate at which certain offenses are committed, the District Attorney's Office is adopting the following policy:

1) Where a person is arrested and charged with Violation of the Georgia Controlled Substances Act "VGCSA", and he/she possesses a **Personal Use Amount** of any controlled substance as defined below, the ADA shall: a) Nolle Prosse the indictment or accusation if the only charge is VGCSA ***and*** the case was pending in the DA's Office as of March 13, 2020 through December 31, 2023, or b) Not Present to the Grand Jury (NPGJ) the unindicted/unaccused case if the only charge is VGCSA ***and*** the case was pending in the DA's Office as of March 13, 2020 through December 31, 2023.**

   This policy only applies to cases involving a **Personal Use Amount** of any controlled substances as defined below and shall not apply if the defendant has a new felony arrest during the pendency of his/her existing case. However, the defendant shall remain eligible to have his/her case dismissed if he/she has a new arrest for a misdemeanor offense, except for Family Violence related misdemeanors. Additionally, the defendant shall remain eligible to have his/her case dismissed if he/she has a new arrest for VGCSA involving the possession of a **Personal Use Amount** of drugs. However, a new arrest for VGCSA possession ***above*** a **Personal Use Amount**, drug trafficking, sale, manufacture, or Possession with Intent to Distribute shall make the defendant ineligible for this policy.

2) Where a person is arrested and charged with Forgery and he/she presented, uttered, and possessed a forged instrument or document but obtained no funds and the victim suffered no financial loss or harm, the ADA shall: a) Nolle Prosse the indictment or accusation if the only charge is Forgery, or b) NPGJ the unindicted/unaccused case if the only charge is Forgery ***and*** the case was pending in the DA's Office as of March 13, 2020 through December 31, 2023.**

Effective Date: 06/23/22; SB

3) Where a person is arrested and charged with Theft by Conversion, Theft by Deception, Theft by Taking, Theft by Shoplifting or any similar theft cases, the property is subsequently recovered and returned to the victim and there was no damage to the property, or the victim no longer wishes to prosecute, the ADA shall: a) Nolle Prosse the indictment or accusation if the only charge is one of the above Theft charges, or b) NPGJ the unindicted/unaccused case if the only charge is one of the above Theft charges ***and*** the case was pending in the DA's Office as of March 13, 2020 through December 31, 2023.**

4) Where a person is arrested and charged with Identity Fraud, Identity Theft, Financial Transaction Card Fraud, or Financial Transaction Card Theft, or any similar financial crimes, and there was no financial loss to victim or no harm to the victim's credit rating or worthiness, the ADA shall: a) Nolle Prosse the indictment or accusation if the only charge(s) is Identity Fraud, Identity Theft, Financial Transaction Card Fraud, or Financial Transaction Card Theft, or b) NPGJ the unindicted/unaccused case if the only charge(s) is Identity Fraud, Identity Theft, Financial Transaction Card Fraud, or Financial Transaction Card Theft or any similar financial crimes ***and*** the case was pending in the DA's Office as of March 13, 2020 through December 31, 2023.**

5) In certain cases where a person is arrested and charged with any non-violent offense where the facts lend themselves to a civil cause of action rather than a criminal matter; Possession of Tools for Commission of Crime where there is no evidence that the defendant committed or was about to commit a burglary, theft, or other crime; Criminal Use of an Article with Altered Identification Mark; ***or such other offenses*** that the ADA believes, in their discretion, would be in the interest of judicial economy not to prosecute. In making this determination, the ADA should assess the facts of case and consider the seriousness of the crime as well as the needs of the victim. This is not an exhaustive list and the ADA should consult with their Deputy Chief on these cases and a determination will be made on a case-by-case basis.

6) Where a case involves the commission of a misdemeanor only, the DA's Office will transfer these cases to the Solicitor General's Office.

7) Any case dismissed pursuant to the above criteria shall include the following language on the Nolle Prosse or Notice of Disposition of Charges/NPGJ document: "**While there was probable cause for the arrest, the State declines to prosecute.**"

8) If the ADA has any questions about whether a case is eligible for dismissal under this criteria, he/she should consult their Deputy Chief. This policy is not intended to take away an ADAs prosecutorial discretion but rather give direction in specific cases. In the event an ADA feels a case should be dismissed under this policy, but the facts do not fall within the express guidelines of this policy, the ADA should still consult with their Deputy Chief and continue to exercise their prosecutorial discretion.

9) Pretrial Diversion Criteria has been expanded to include Burglary, Criminal Attempt to Commit Burglary, and Entering Automobile cases that meet the following criteria:

   a. **Burglary in the First-Degree**: the defendant is between the ages of 17 and 24 can be considered for PTD. However, if the defendant entered a carport, open attached garage, detached garage, tool shed, front or back porch, patio, he/she may be eligible for PTD.

   b. **Burglary in the Second-Degree** the defendant can be of any age and can be considered for PTD.

   c. **Criminal Attempt to Commit Burglary:** the defendant can be of any age can be considered for PTD.

   d. **Entering Automobile:** the defendant can be any age can be considered for PTD. However, cases involving damage to the vehicle(s) caused by the defendant during his/her unlawful entry--to include damage to locks, doors, windows, etc.—will only be considered for PTD if the victim(s) agrees. The payment of restitution to the victim(s) shall be a part of any PTD offer. If the defendant cannot or does not pay restitution, the case will be sent back to the Trial Line Division for prosecution.

10) Nothing in this policy precludes any cases that are otherwise eligible for the District Attorney's Office Pretrial Diversion Program from being referred to the program and accepted upon approval by the Deputy Chief. All cases must be referred in Odyssey using the procedure outlined in the DCAP Referral Procedure.

11) All case dispositions under this policy shall be made in compliance with the Crime Victims' Bill of Rights and Marsy's Law. After first receiving approval from their Deputy Chief, each ADA is required to make at minimum 3 attempts at making victim contact and document each attempt in Odyssey.

12) All questions concerning the application of this policy should be directed to your Deputy Chief and any deviation from this policy must be approved by your Deputy Chief.

Effective Date: 06/23/22; SB

General Definitions

Personal Use Amount means possession of controlled substances in circumstances where there is no other evidence of an intent to sell, distribute, manufacture; or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of any controlled substance. The following criteria shall be used to determine whether an amount of controlled substance in a particular case is in fact a personal use amount.

A. ***Including but not limited to***, if the defendant possessed:
- 2 grams or less of Cocaine
- 2 grams or less of Methamphetamine
- 2 ounces or less of Marijuana
- 1 gram or less of Heroin
- 1 gram or less or less than 5 pills of MDMA
- 40 units or less of LSD
- 12 grams or less of Psilocybin
- 40 units or less of Methadone
- 40 pills or less of Oxycodone, ***AND***

there is any "indicia" for personal use or no other evidence of the defendant's intent to sell, distribute, manufacture; or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting of the controlled substance.

B. **Evidence of the defendant's intent to sell, distribute, manufacture; or to facilitate the manufacturing, compounding, processing, delivering, importing, or exporting or any controlled substance shall include:**

- Evidence, such as drug scales, drug distribution paraphernalia, drug records, drug packaging material, method of drug packaging, drug "cutting" agents and other equipment, that indicates an intent to process, package or distribute a controlled substance;
- The controlled substance is related to large amounts of cash or any amount of prerecorded government funds;
- The controlled substance is possessed under circumstances that indicate such a controlled substance is a sample intended for distribution in anticipation of a transaction involving large amounts, or is part of a larger delivery; or

- Statements by the defendant, or otherwise attributable to the defendant, including statements of co-conspirators, that indicate possession with intent to distribute.
- Other information available to the ADA indicating possession of a controlled substance with intent to distribute, including but not limited to, the defendant's criminal history. In other words, the defendant's history of convictions and arrests indicate that he/she is engaged in drug dealing.

ATTACHMENT F

Senator Clint Dixon

Like you, I'm frustrated by the Fulton County indictments handed down last week. This is clearly all about Fani Willis' and her unabashed goal to become some sort of leftist celebrity.

While some have called for a Special Session, that's not a legitimate option to hold her accountable. There is no legal action that the Legislature can take to stop Fani Willis' bad behavior. The Legislature does not have control over her office or funding. And even if the legislature was empowered to act, calling a Special Session requires 3/5s of the legislature, meaning Democrats would have to go on the record in opposition of their aspiring super star.

This reality is one of the reasons we passed a law this year to hold rogue District Attorneys accountable. Once the Prosecutorial Oversight Committee is is appointed in October, we can have them investigate and take action against Fani Willis and her efforts that weaponize the justice system against political opponents. This is our best measure, and I will be ready to call for that investigation.

EXHIBIT 2

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

AFFIDAVIT OF JARED WILLIAMS

I, JARED WILLIAMS, state as follows:

1. I reside in Augusta, Georgia. I am over 18 years old.
2. I currently serve as District Attorney for the Augusta Judicial Circuit. I have served in this role since January 2021, having been elected in 2020.
3. I was born and raised in Augusta, GA. Before my election as District Attorney, I worked both as a prosecutor and a criminal defense attorney in the Augusta Judicial Circuit.
4. The Augusta Judicial Circuit District Attorney represents the state in felony and juvenile cases in Burke and Richmond Counties.
5. I was elected in a contested election, based on my philosophies regarding how best to promote safety and justice within our communities.

6. The Circuit has approximately 5,000 open cases, between the Superior and Juvenile Courts. Over 20 percent of the cases opened since I took office concern violent felonies, while felony drug crimes make up over 23 percent of the docket.

7. I have committed to prosecute cases only where my office has a good-faith belief that there is sufficient admissible proof of guilt beyond a reasonable doubt. I train and direct my prosecutors on the importance of adhering to this standard. Even if there was probable cause sufficient to arrest someone, if the evidence is not sufficient to meet the reasonable-doubt standard, the case should not be presented to the grand jury, or the prosecutor should *nolle pros* the case.

Backlogs and Prioritization

8. When I became District Attorney, the office faced a substantial pre-existing backlog of cases.

9. The backlog worsened during COVID-19, as courts and grand juries closed down. Even after proceedings resumed, it took much more time to conduct a grand jury or a trial while maintaining social distancing and other safety measures.

10. COVID-19 has also contributed to recruitment and retention issues at investigative agencies in the Augusta Judicial Circuit, causing further delays in investigating and charging cases. These delays are particularly stark for cases that involve serious, complex, or violent crimes.

11. The investigative and judicial delays and backlogs have been worsened by a spike in violent crime within the Augusta Judicial Circuit, as in many other communities throughout the country, since COVID-19.

12. When I first entered office, every assistant district attorney in Superior Court maintained a docket that included every kind of case, from drug possession to murder. This made it difficult for prosecutors to focus on the violent and other serious crimes that are most destructive to public safety in the Augusta region. From my perspective, the office culture prioritized the number of convictions, regardless of the difficulty or seriousness of the underlying offense.

13. Facing these challenges, I took office with a focus on prosecution of serious violent crimes, while also cultivating public safety in the long term through comprehensive approaches.

14. I make clear to every assistant district attorney who joins my team that the office's priorities are to prosecute felonies that pose the greatest risk to community safety, such as serious violent felonies or crimes that endanger children.

15. To institutionalize the focus on serious violent crime, I created the Circuit's first Major Crimes Division, which is further organized into a Violent Crimes Unit and a Special Victims Unit. The assistant district attorneys in these units are responsible for prosecuting serious violent felonies, sexual assault, and other significant crimes, without having to balance a caseload of other prosecutions. This allows them to develop expertise and ensures that these important cases receive attention.

16. Even where a case could be proven beyond a reasonable doubt, I understand my duties as a prosecutor to go beyond merely seeking every possible conviction. Rather, I direct my office to use our powers to promote justice and public safety, considering all of the consequences of prosecution and incarceration.

Pretrial Diversion

17. Alongside the focus on prosecuting crimes that pose serious threats to community safety, I also seek to employ smart policies to prevent repeat offenders and address the root causes of crime.

18. Accordingly, I created the Circuit's first pretrial diversion program, pursuant to O.C.G.A. § 15-18-80.

19. As required by the statute, I developed and made publicly available a set of guidelines to govern admission to and participation in the program.

20. A true and accurate copy of the Pretrial Diversion Handbook, which includes these guidelines, is attached as Attachment A.

21. I am also currently creating a program called "Checks Over Stripes," which is designed to reduce recidivism among younger offenders. The program offers specialized, intensive probation for youthful offenders who might otherwise be at risk of incarceration.

22. I carry this approach to the juvenile docket as well. By partnering with community organizations, I have been able to divert juvenile offenders out of detention and into classrooms.

23. One program that reflects this approach is my "Youth Diversion to the Arts" program. This program creates a structured environment for certain juveniles to receive counseling and arts education, giving them the tools to avoid criminal behavior.

SB 92

24. SB 92 threatens to interfere with my ability to exercise the duties of my office and serve the Augusta Judicial Circuit in multiple ways.

25. Because I do not understand how a prosecutor is expected to satisfy the new individual-review duty at O.C.G.A. § 15-18-6(4), I expect that my staff will spend unnecessary time and effort on cases that do not merit prosecution. I fear that this will divert resources away from my core priorities to prosecute crimes that have substantial effect on community safety.

26. I believe that it is more important to prosecute murder than to prosecute marijuana. If not for SB 92, and particularly its prohibition for an investigation grounded in "stated policies," I would seriously consider a non-prosecution policy regarding simple possession cases where there are more effective means of correcting behavior, such as treatment for substance use disorder, or where resources could be better deployed on crimes that threaten safety.

27. Such a non-prosecution policy would be grounded in part on the difficulty to prove simple possession cases where the evidence suggests personal use, and the corresponding time and resources those cases require. These practical challenges are exacerbated by the limited capacity of the Georgia Bureau of Investigation crime lab, which limits the drug-testing results that are available and often leads to substantial delays in receiving results.

28. The policy would also allow provide staff and law enforcement with guidance on how to best use their time and resources, helping ensure that attention is focused on the most pressing community needs.

29. But I will not now adopt such a policy because of SB 92 and its provision for investigations and discipline based on a "stated policy" based on non-prosecution. I take seriously the trust that the voters put in me, by electing me to office, and I fear that such a policy would risk throwing away my position.

30. In fact, I have concern that many of the steps I already take, such as communicating priorities to my staff and articulating guidelines for pretrial diversion, may be sufficient "stated policies" to allow the Prosecuting Attorney Qualifications Commission to investigate and discipline me.

31. I also joined with other prosecutors from around the country to make a commitment not to prosecute women or their doctors for reproductive healthcare decisions, which may constitute a "stated policy" that would expose me to investigation and discipline.

32. These risks are heightened in the coming year, as a challenger has announced her candidacy for District Attorney. In anticipation of the election, I have already noticed voters' interest in my prosecutorial approach to inform the choice before them. Yet I am tempering my statements in community meetings and other public settings to avoid a comment that could be construed as a "stated policy," exposing me to discipline.

I declare under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Jared Williams

DATED: August 24, 2023

SIGNED AND SWORN TO BEFORE ME ON THIS 24th. DAY OF AUGUST, 2023

Patricia E Marshall
NOTARY PUBLIC

PATRICIA E MARSHALL NOTARY PUBLIC RICHMOND COUNTY, GA

My commission expires: NOV. 28, 2026

ATTACHMENT A

PRE-TRIAL DIVERSION HANDBOOK
AUGUSTA JUDICIAL CIRCUIT
District Attorney
Jared T. Williams

735 James Brown Blvd, Suite 2400
Augusta, GA 30901

BURKE - RICHMOND

Phone 706-821-1135
Fax 706-821-1237

Applicants are admitted upon timely application by their attorney or counsel of record

- For purposes of this program, a timely application is one served upon the District Attorney prior to charges being filed, or no later than 2 months after arraignment for accused/indicted cases.

In order to be screened, the following criteria must be established:

- Applicant has no conviction for a serious violent felony or a sex crime.
- Applicant has had no felony conviction of any type within the last twenty years.
- If applicant has a felony conviction more than twenty years old, the applicant must have had zero arrests in the previous 10 years.
- Applicant has not previously refused to apply for PTD on an applicable offense within our circuit.
- Applicant has not previously used PTD or accountability program to avoid a felony conviction.
- Applicant has not previously failed PTD or accountability program within our circuit.
- Applicant is not currently under sentence for FOA or Conditional Discharge.
- Applicant has no history of violence, no established pattern of criminality, and no more than 3 misdemeanor convictions on record.
- Applicant does not suffer a substance abuse disorder for which a more strenuous drug treatment program would be more suitable, as determined by District Attorney.
- Alternative Sentencing Coordinator and Alternative Sentencing ADA agree the applicant is acceptable and suited for the program.

The following types of offenses are excluded from PTD consideration:

- Violent or Inherently Dangerous Felonies
- Sex Crimes
- Residential Burglaries
- Crimes for which a serious injury was sustained
- Crimes involving Victims for which the Victim states reasonable, timely opposition
- PWID, Sale, Manufacture, or Trafficking of Controlled Substances
- Possession of Heroin, Fentanyl, Morphine, or any other drug for which the program coordinators deem requires a more intensive level of treatment.
- DUI

All Applicants must:

- Acknowledge their wrongdoing and waive certain constitutional and statutory rights.
- Pay full restitution to victim(s) at time of entry into the program.
- Pay applicable administration and supervision fees.
- Comply with random drug and alcohol screenings and/or required counseling at own expense.
- Fully and earnestly participate in the program.
- Perform community service work.
- Provide proof of employment (reputable) or full-time education prior to Nolle Prosequi of case.

*****Tiers of Supervision are Non-Negotiable. Range from 1-12 Mos, set by Alt. Sent. ADA*****

Tier Tracks For Pre-Trial Diversion Program

The below tier breakdowns are meant to give potential applicants a brief overview of what the program will require. It is **NOT** meant to be an exhaustive list of all crimes or program requirements of each specific tier.

Every participant regardless of tier will be required to attend all drug screens, counseling sessions, or any other appearances as required by the program. Any conflicts in scheduling must be brought to the attention of the participant's supervising officer **immediately**.

Express Tier

Qualifying Crime: Misdemeanor Marijuana

Length: 1-3 months

Requirements:

- 1-3 months in the program
- 20 hours of community service (this can be commuted to 10 if the defendant is working or in school full time)

Tier 1

Qualifying Crime(s):

- Misdemeanor Shoplifting
- Felony Marijuana
- Drugs<1g excluding Meth
- Thefts<$500

Length: 3-6 months

Requirements:

- 40 hours of community service (This can be commuted to 20 if the defendant is working or in school full time)
- Counseling as recommended

Tier 2

Qualifying Crime(s):

- Felony Shoplifting based on amount
- Drugs<3g
- Thefts $500-$1500

Length: 6-9 months

Requirements:

- 6-9 months in the program
- 80 hours of community service (This can be commuted to 40 if the defendant is working or in school full time)
- Counseling for drugs if applicable
- Counseling for anger management/family violence if applicable

Tier 3

Qualifying Crime(s):

- Felony Shoplifting
- Drugs>3g
- Thefts $1500-$3000

Length: 9-12 months

Requirements:

- 9-12 months in the program
- 120 hours of community service (This can be commuted to 80 if the defendant is working or in school full time)
- Counseling required based on need
- Must complete GED or provide proof of enrollment or completion

EXHIBIT 3

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

AFFIDAVIT OF JONATHAN ADAMS

I, JONATHAN ADAMS, state as follows:

1. I reside in Forsyth, Georgia. I am over 18 years old.
2. I am a career prosecutor, having served as a prosecutor for 20 years. I also serve as a lieutenant colonel in the Georgia National Guard.
3. In 2016, I was elected District Attorney for the Towaliga Judicial Circuit, and I took office in January 2017.
4. I currently serve as President of the District Attorney's Association of Georgia, a member of the Board of Governors of the State Bar of Georgia, and a council member for the Prosecuting Attorney's Council of Georgia.
5. My office is responsible for representing the state in all misdemeanor, felony, and juvenile cases in the Towaliga Judicial Circuit, which is composed of Butts, Lamar, and

Monroe Counties. My office also handles criminal cases in the Probate Courts of Butts and Lamar Counties.

6. The mission of my office is to prosecute professionally and competently; to treat all people courteously, and respectfully, to advocate for the rights of victims; and above all to make our community a safe place for all of its residents.
7. I believe that there is no one solution to addressing crime in our community. Although incarceration is sometimes necessary to remove extremely violent individuals and sexual predators from our society, many defendants can live productive and fruitful lives if they address mental-health and addiction challenges.
8. I supervise a full-time staff of ten prosecuting attorneys, six legal assistants, two investigators, and four victim advocates.
9. My office has opened an average of 1,866 cases per year since I took office. COVID-19 created a significant backlog of open, stalled cases clogging the local court system. The office is currently averaging 193 open cases per Assistant District Attorney.

Pretrial Diversion, Accountability Courts, and Exercise of Discretion

10. The plurality of cases that my office handles are drug crimes or DUI, which comprised 40% of our cases in 2022.
11. This high proportion of drug and alcohol-related crimes led me to seek a solutions-oriented approach to these crimes. My approach embraces accountability courts and pre-trial diversion programs, which aim to provide defendants with services to address addiction and related problems.

12. Towaliga Judicial Circuit has a long, successful history of accountability courts. Judges may send a defendant to an accountability court before adjudication to receive services under judicial supervision.

13. Building off the success of DUI courts in other parts of the state and drug accountability courts in other states, Towaliga Judicial Circuit created Georgia's first drug accountability court in 2005. Later, the legislature created an accountability court funding program in 2012, which has contributed to the growth of accountability courts across the country.

14. Since taking office, I worked with a coalition of stakeholders to create a Mental Health Accountability Court and a Veterans Accountability Court alongside the original Drug Accountability Court. I encourage my staff to identify and recommend cases for inclusion in the Accountability Courts.

15. Recognizing that some cases can be addressed even before the Accountability Court system, I also created the Towaliga Judicial Circuit's first formal pre-trial diversion program when I took office.

16. When I first took office, certain cases were dismissed or *nolle prosed* through a form of pretrial diversion. However, the pretrial diversion efforts were informal and unstructured.

17. I established the formal program pursuant to O.C.G.A. § 15-18-80. Among other requirements for a program created under this statute, I was required to create written guidelines regarding the kinds of cases that would be subject to diversion. *See* O.C.G.A. § 15-18-80(g).

18. A true and accurate copy of my guidelines for pretrial diversion is attached as Attachment A.

19. I worked with the misdemeanor probation supervision office to set up appropriate parameters for pretrial diversion that prioritize young, first-time offenders for non-violent, non-sexual offenses. The program provides for defendants to engage in community service, restitution, anger management classes, and other forms of therapy, rather than pursuing full adjudication.

20. Outside of the formal § 15-18-80(g) program, I also allow Assistant District Attorneys to divert cases that do not meet the formal eligibility criteria on a case by case basis. These diversions are an extension of my office's inherent authority to dismiss or *nolle pros* a case.

21. Some other cases are dismissed entirely for insufficiency of the evidence or for another reason in the interests of justice.

22. There are several reasons that marijuana cases, in particular, rarely merit the resources of aggressive prosecution.

23. The Georgia Bureau of Investigations State Crime Lab will not test misdemeanor amounts of marijuana. Even when the lab will test, it has taken more than six months to report lab results. The Towaliga Judicial Circuit does not have the resources to operate its own crime lab.

24. It is also difficult to empanel juries for marijuana prosecutions. Recently, my office prosecuted a felony marijuana case. Over 30 potential jurors were dismissed because they stated in *voir dire* that they did not support prosecuting marijuana charges. This required a substantially larger jury pool than we normally call.

25. Nearly 30% of cases that are opened in the Circuit do not reach a formal adjudication, resolving instead through pretrial diversion, an accountability court, or a dismissal or *nolle pros.*

Sentencing Policies

26. In my view, the hardest part of a prosecutor's job is determining the appropriate sentence to recommend.
27. Early in my time as district attorney, I noticed that members of my staff were making different decisions on this difficult question. To address this variation and resulting disparities, I developed two sets of sentencing guidelines: one for a wide array of offenses, and another specifically for drug crimes.
28. These guidelines were developed in consultation with prosecutors in my office who have expertise with each set of crimes.
29. These policies are published in my office's employee handbook. A true and accurate copy of the relevant portions of the employee handbook is attached as Attachment B.
30. Assistant district attorneys are generally expected to pursue a sentence within these guidelines. This promotes consistency, fairness, and predictability.
31. However, line prosecutors may make exceptions to these guidelines subject to approval by a supervising deputy district attorney or, in the case of a significant deviation, by me personally.
32. The Sentencing Guidelines are an example of the importance of clear communication from me to my staff. Directives like the guidelines are essential to ensure that the office pursues justice according to my prosecutorial philosophy, even as we are spread across courtrooms in three counties.

Memorandum Regarding Adultery and Related Charges

33. In Georgia, a private citizen may apply to a Magistrate Court for an arrest warrant.

34. I sometimes receive requests from magistrate judges in my county, who are not required by law to be attorneys, asking me to clarify the applicability of statutes in the context of such applications.

35. In 2022, I authored a public memorandum to Magistrate Judge Buck Wilder, who sought advice regarding an application for a warrant for adultery brought before his court by a private citizen.

36. A true and accurate copy of this memorandum is attached as Attachment C.

37. After reviewing the statute and precedent, I determined that, "[b]ased on well settled law regarding the right of privacy and the above referenced statutes," my office "cannot prosecute" the following statutes: Sodomy, O.C.G.A. § 16-6-2; Adultery, O.C.G.A. § 16-6-19; and Fornication, O.C.G.A. § 16-6-18.

38. Though these offenses remain in the Georgia criminal code, precedents of both the Georgia Supreme Court and the U.S. Supreme Court protect the right to private, consensual, and non-commercial acts of sexual intimacy.

39. In my view, prosecuting alleged violations of unconstitutional laws that improperly remain part of the Georgia Criminal Code would violate the constitutional rights of Georgians and my oath of office to uphold the federal and state Constitutions.

SB 92

40. SB 92 threatens to prevent me from fully exercising my discretion and carrying out the duties of my office.

41. SB 92 infringes on my prosecutorial discretion to create policies, guidelines, and memoranda like those discussed above that are essential to the efficient and just operations of the Towaliga Judicial Circuit.

42. Under the provisions of SB 92, I could be subject to a complaint, investigation, and discipline, up to and including removal and disqualification from office because of any of the following discretionary policy decisions: my non-prosecution policy regarding adultery, fornication, and sodomy; my sentencing guideline documents, and my regular practice of dismissing cases, either through non-statutory diversion or in the interest of justice.

43. In fact, I have rescinded the Adultery Memorandum described above, out of a concern that the PAQC would interpret it to be a stated policy not to enforce certain crimes and inconsistent with an individual review of all cases for which there is probable cause.

44. I am not certain how to comply with the new individual-review duty imposed by SB 92. If my office were to thoroughly examine every case for which there is probable cause and document our reasoning, it would be difficult to discharge the duties of the office given the nearly 2,000 cases that my office opens per year.

45. SB 92 also affects how I speak to the public about my approach to prosecution in order to avoid making a statement that could be construed as a policy that could subject me to discipline under SB 92.

46. I have already received threats that members of the public plan to file superfluous, unsubstantial complaints against me under SB 92.

47. This comes after I have received death threats and had my home address disseminated online.

48. I thus fear that SB 92 would force me to be accountable to the whims of fringe individuals whose complaints could be investigated by the PAQC, rather than the majority of my constituents.

49. Meanwhile, I am keenly aware, as a member of the Board of Governors for the State Bar, that there are other avenues to address true prosecutorial misconduct—including Bar discipline.

I declare under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Jonathan Adams

DATED: August 24, 2023

SIGNED AND SWORN TO BEFORE ME ON THIS 24th DAY OF AUGUST, 2023

NOTARY PUBLIC

My commission expires: 05/23/2027

FRANCINE P NORRIS NOTARY PUBLIC CRAWFORD COUNTY, GEORGIA

ATTACHMENT A

Pre-Trial Diversion Program

The Diversion program was created pursuant to O.C.G.A. §15-18-80 as an alternative to the prosecution of offenders in the criminal system. The Diversion Program is designed for first offenders who have committed crimes that did not result in injury to a victim, are otherwise non-violent and non-aggressive in nature. Appropriate cases should not involve driving under the influence charges, nor domestic violence except on a limited case by case basis.

In accordance with the conditions outlined in their contractual agreements, individuals accepted to participate in the Diversion Program will immediately be subjected to individualized and controlled supervisory programs for a specified period of time in lieu of traditional prosecution. That is, persons who meet eligibility criteria will be offered the opportunity to participate in the Diversion Program which will serve as an alternative to the county's traditional methods in handling cases.

Participation in the Diversion Program will be voluntary and if there is counsel, with the advice of counsel, will occur prior to adjudication and if participants satisfactorily complete the Diversion Program, will result in dismissal or nolle prosequi of the charges. Misdemeanor Probation Offices will conduct supervision of participants of the Diversion Program and collect any fines, fees or restitution.

Documentation for entry into the Diversion Program is maintained on Tracker. All defendants should enter a plea to an accusation or indictment with sentencing and adjudication withheld until completion of the program. A nolle prose will be completed upon successful completion of the program. A defendant may be entered into the Diversion Program without a plea but such a process is discouraged.

Defendants entering into any of the Towaliga Judicial Circuit Accountability Courts may be handled under the Pre-Trial Diversion Program. Accountability Court personnel will conduct supervision of all participants and oversee the collection of any fines, fees, or restitution. Administrative fees usually collected for the District Attorney's Office are waived for Accountability Court participants.

ATTACHMENT B

OFFICE OF THE DISTRICT ATTORNEY
TOWALIGA JUDICIAL CIRCUIT

EMPLOYEE HANDBOOK

July 01, 2022

SENTENCE GUIDELINES

Do not downgrade or dismiss a major felony case without discussing your reasoning with law enforcement.

All plea offers expire at the pre-trial date prior to the trial calendar and no negotiated pleas should made or accepted during a trial week.

These guidelines apply to **first offences**. They are a guide with the understanding prosecutorial discretion should be used for each case.

Murder – Kidnapping - Rape – Armed Robbery – Trafficking: Statutory

Criminal Street Gang: 10y serve 5y or as authorized by the underlying offense

Voluntary Manslaughter: 20y serve 10y

Involuntary Manslaughter: 10y serve 5y

Aggravated Battery: 15y-10y serve 5y

Aggravated Assault: 10y serve 3y

Arson-1st Degree: 20y serve 10y

Aggravated Child Molestation: 25y-life or 20y to serve

Child Molestation/Cruelty to Child 1st Degree: 20y serve 10y

Burglary-1st Degree: 10y serve 5y

Theft by Taking/Receiving < 15,000: 10y serve 1y or Drug Court, PDC, or RSAT*

Theft by Taking/Receiving > 15,000: 10y serve 3y

Felony Drug Possession: 5y serve 1y or Drug Court, 120-180d PDC, or RSAT*

Distribution (with no sale): 10y serve 1y or Drug Court, 120-180d PDC, or RSAT*

Distribution (with sale): 10y serve 3y

HV DUI: 10y serve 3y

Entering Auto: 5y serve 2y

Felony Fleeing and Eluding: Serve 3y

Possession of a Firearm by convicted felon: 5y serve 2y

*Drug Court for in-circuit defendants, outside-circuit defendants eligible for private rehab or alternative program/incarceration
**Include any time served as part of the sentence such as 5y, serve 30 days in the LEC with credit for time served.

DRUG OFFENSE GUIDELINES

I. Simple Possession Charges
   a. Schedules I & II
      i. < 10 grams: probation or option of drug court
      ii. > 10 grams: confinement or drug court
   b. Schedules III & IV
      i. Prescription Grade (legal drug; illegally possessed):
         1. Qty of pills < 30 day supply: probation or drug court
         2. Qty of pills > 30 day supply: confinement or drug court
      ii. Homemade Pills
         1. < 10 grams: probation or drug court
         2. > 10 grams: confinement or drug court
   c. Other Factors:
      i. Criminal History could bump an offender into the confinement or drug court category
      ii. Type of drug or mixture could also bump an offender into the confinement drug category (eg: fentanyl)

II. Possession with Intent to Distribute
   a. FACTOR TEST
      i. < 3 primary factors : probation or drug court
      ii. > 3 primary factors: confinement or drug court
   b. Primary Factors:
      i. Ledger, paperwork, secret compartment, or other smoking gun of distro. evidence
      ii. Statements
      iii. Total weight of drugs combined w/ how it is packaged upon seizure
      iv. Cutting materials present
      v. Cash
      vi. Firearm located w/ drugs (not just present at crime scene)

III. Automatic Disqualifiers
   a. Distribution w/ Sale
   b. Trafficking amounts unless PIWD charge is more appropriate
   c. Criminal History considerations

IV. Location Considerations
   a. Local offenders meeting above criteria will be offered confinement or drug court
   b. Non Local offenders meeting above criteria will be offered confinement or the ability to find another comparable treatment alternative (THOR approved)

ATTACHMENT C

OFFICE OF THE DISTRICT ATTORNEY
TOWALIGA JUDICIAL CIRCUIT
STATE OF GEORGIA

Jonathan L. Adams
District Attorney

Dorothy V. Hull
Chief Assistant District Attorney

Assistant District Attorneys:
James L. Moss, Deputy Chief
E. Wayne Jernigan, Jr, Deputy Chief
Leslie A. Tilson ▪ Carolee R. Jordan
J. Maxwell Smith ▪ Chris E. Miranda
Jessica B. Haygood ▪ Michael D. Parrish

September 2, 2022

MEMORANDUM FOR RECORD

Re: Sodomy - §O.C.G.A. 16-6-2, Adultery - §O.C.G.A. 16-6-19, and Fornication - §O.C.G.A. 16-6-18

Based on the well settled law regarding the right of privacy and the above referenced statutes, the Office of the District Attorney for the Towaliga Judicial Circuit cannot prosecute said statutes. The following holdings of the Georgia Supreme Court and the Georgia Court of Appeals are listed for reference.

"The right of privacy under GA. Const. 1983, Art. I, Sec. I, Para. I prohibits the state from prosecuting individuals engaged in private, unforced non-commercial sex." In re J.M., 276 Ga. 88.

"Insofar as it criminalizes the performance of private, unforced non-commercial acts of sexual intimacy between persons legally able to consent, the statute manifestly infringes upon a constitutional provision which guarantees to the citizens of Georgia the right of privacy." Powell v. State, 270Ga. 327.

Please let me know if there are any questions, issues or concerns.

Sincerely,

Jonathan L. Adams

Jonathan L. Adams
District Attorney

EXHIBIT 4

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

AFFIDAVIT OF FLYNN D. BROADY, JR.

I, FLYNN D. BROADY, JR., state as follows:

1. I reside in Cobb County, Georgia. I am over 18 years old.
2. I currently serve as District Attorney for the Cobb Judicial Circuit. I have served in this role since 2021, having been elected in 2020.
3. I had previously worked as a prosecutor in the Cobb County Solicitor General's Office since retiring from the United States Army in 2008. While at the Solicitor General's Office, I focused on Accountability Courts and other comprehensive strategies to address recidivism and promote public safety.
4. The Cobb Judicial Circuit District Attorney represents the state in felony and juvenile cases.

5. The Cobb Judicial Circuit receives approximately 6,500 new felony warrants each year. Of these cases, approximately 40% are nonviolent, and about a quarter are drug-related cases.
6. Over years prosecuting cases, it became clear to me that many defendants in serious criminal cases first come into contact with the criminal justice system on a simple drug possession charge. However, the response to that charge, which too often has not included treatment and other services, fails to rehabilitate them.
7. Alongside my concerns about the effectiveness of prior responses to drug cases, there are significant practical challenges for prosecution of drug cases. The Georgia Bureau of Investigations Crime Lab has a significant backlog, which means that results for testing may take as long as a year to come back. This significantly delays the prosecution of the case. While the case is pending, it is difficult for a defendant to fully reintegrate into society, obtain or maintain lawful employment, and avoid further substance abuse and law-enforcement interaction.
8. For this reason, I have prioritized rehabilitation and restorative justice as district attorney. I developed a Restorative Justice Initiative that incorporates changes to case management, pre-trial diversion, and accountability courts.
9. In November 2021, I created the Early Intervention Court Management System. This system incorporated pretrial diversion and accountability courts to place defendants in drug treatment within 30 days of arrest. In its first year, 1,100 cases were placed in the system, amounting to approximately 23% of cases.
10. I then worked with the Cobb Chief Magistrate Judge Brendan Murphy to develop the Alternative Resolution Court, which replaced the Early Intervention Court Management

System. This court expedites cases for defendants who would benefit from immediate drug, alcohol, or mental health treatment. All non-violent, victimless cases are first referred to this court, to determine eligibility for diversion or accountability courts.

11. These efforts have supported the successful growth of pre-trial diversion. Since I took office, Cobb Judicial Circuit has tripled the number of participants in the Pre-Trial Diversion Program, and more than 90% of participants completed the program.
12. By resolving cases early, before traditional adjudication, my office is often able to obtain quicker restitution for victims.
13. When I first took office, there was significant public distrust in the District Attorney's office and in law enforcement generally. This distrust was fueled in part by a lack of transparency.
14. To rebuild trust in my office, I have made an effort to regularly discuss my approach to prosecution with the public and with officials throughout Cobb County.
15. This includes regular presentations to the Cobb County Commission and quarterly updates to the community.
16. I have publicly stated my belief that abortions fall within the exception to criminalization at O.C.G.A. § 16-12-141(c), necessary to fully preserve the health and life of the pregnant person. This belief is grounded in the experience of almost losing my wife during the birth of my daughter. After that experience, I recognize the inherent danger of pregnancy, particularly in Georgia which has one of the highest maternal mortality rates in the country. In my opinion, abortion is an inherently medical decision between a patient and their doctor.

17. SB 92 will interfere with my ability to carry out my duties as District Attorney and effectively provide for public safety in Cobb County.

18. Because there is no clarity regarding the nature of individualized review that is required by O.C.G.A. § 15-18-32(h)(6), I face an incentive to spend unnecessary time and attention to examine and document cases that do not merit prosecution.

19. Further, I am concerned that my efforts to establish the Alternative Resolution Court and expand pretrial diversion will be determined to constitute "conduct prejudicial to the administration of justice" or otherwise be inconsistent with my duties, as neither of these phrases are clearly defined within the statute. Moreover, each of these programs are built on "stated policies" which would enable a disgruntled individual to file a complaint against me.

20. Also, to avoid generating unnecessary and unjustified complaints under the "stated policy" provision, I am changing the ways that I communicate with Cobb County officials and residents. I intend to limit the information that I provide in future updates and appearances before the Cobb County Commission and other audiences.

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21. These limitations on my speech are inconsistent with my guiding principle of transparency and efforts to build trust with the Cobb County community, but I understand them to be necessary in light of the threat of investigation and discipline by the Prosecuting Attorney Qualifications Commission.

I declare under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Flynn D. Broady, Jr.

DATED: August 23, 2023

SIGNED AND SWORN TO BEFORE ME ON THIS 23 DAY OF AUGUST, 2023

Bettie S Moore
NOTARY PUBLIC

My commission expires:

BETTIE S MOORE NOTARY PUBLIC COBB COUNTY GEORGIA EXPIRES DEC 29, 2023

EXHIBIT 5

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

AFFIDAVIT OF COURTNEY ELIZABETH GUTHRIE-PAPY

I, COURTNEY ELIZABETH GUTHRIE-PAPY, state as follows:

1. I am a current resident of Savannah, Georgia. I am over 18 years old.

2. I am a community organizer, restorative justice practitioner, and nonprofit executive. I have over ten years of experience managing teams, spearheading youth leadership, and developing community initiatives at non-profits.

3. I originally received my training as a restorative justice practitioner at the International Institute for Restorative Practices, and have been a Highlander Education Center Greensboro Justice Fellow, a PEN Prison Writing Fellow, a People for the American Way's Front Line Leader Fellow, and most recently, a Take a Breath fellow at The Action Lab.

4. I have previously served as the director and lead organizer at Emergent Savannah from 2014 to 2017 as well as the Community Director of the Creative Coast from 2017 to 2019.

5. Since 2019, I have served as the Director of Public Policy and Communications at the Deep Center.

6. The Deep Center is a non-profit organization based in Savannah which serves nearly 1,000 youth and young adults annually through our multi-tier programs fostering youth voice, social agency, and systems change.

7. As a part of my work at Deep Center, I develop the organization's public policy and advocacy positions on education and criminal justice reform. In addition, I serve as the registered lobbyist for the Deep Center.

8. Deep Center's mission is to empower Savannah's young people to thrive as learners, community leaders, and agents of change.

9. Deep Center's work to reform the criminal justice system began in earnest in 2019.

10. For many years before that, our organization focused on direct services for young people. As we began to work in the juvenile court program more and more, we noticed the ways in which the local justice system impacted youth both directly and through their families. We came to recognize how much of an obstacle the carceral system was for those we serve, and we decided to better support the needs of our community by including more advocacy for systems change and criminal justice reform into our work.

11. Very early in that process, we realized the central role that district attorneys play in supporting and implementing reforms.

12. Prior to 2021, Deep Center had only a limited relationship with local prosecutors.

13. When Chatham County District Attorney Shalena Cook Jones was elected, Deep Center began to engage in a partnership with her administration.

14. Both during the campaign and after her election, District Attorney Jones made many statements that demonstrated her commitment to criminal justice reform. Those public and private statements showed us that her approach to justice aligned, in at least in some important ways, with the mission and work of the Deep Center.

15. At beginning of District Attorney Jones' tenure, Deep Center identified four areas for potential partnership: (i) the bail and bond program; (ii) the county's jail backlog; (iii) pre-arrest diversion; and (iv) court fees and fines.

16. Initially, Deep Center received a good amount of receptivity to these ideas and projects from District Attorney Jones' office.

17. However, as a result of SB 92, District Attorney Jones has backed away from many of these reforms and has expressed increasing reluctance to take any positions that might be perceived as more lenient or less aggressive about charges or sentencing.

18. As an example, in the summer of 2021, we began to work on the large jail backlog in Chatham County. At the time, roughly 71 people were in jail still awaiting a trial or sentencing after lengthy detention. The backlog was the result of delays in the court system due to COVID-19 and a lack of capacity in the District Attorney's office to handle the extra pending cases that had not been processed.

19. As of July 2021, most who were a part of this backlog had waited at least a year and some had waited up to three years for sentencing. It was estimated that the cost of incarceration for these individuals totaled $6.76 million to taxpayers.

20. Deep Center advocated for two reforms to address the backlog: (i) the use of American Rescue Plan Act (ARPA) funding to hire more ADAs by the county; and (ii) the establishment of a rapid trial docket which would rely on ADA discretion to dispose of cases more quickly and leniently.

21. Although the funds were secured to hire more staff, the rapid trial dockets did not come to fruition.

22. In the summer of 2022, we began to work with District Attorney Jones' office to restart a pre-arrest diversion program. Under the contours of the program Deep Center proposed, anyone cited or charged on a first offense or on a quality-of-life offense, such as disorderly conduct or vagrancy, would be diverted into programming, the completion of which would wipe the charge from their record.

23. Such diversion programs have proved to be very successful in other jurisdictions. They minimize involvement with the criminal legal system, and they ensure fewer people suffer collateral consequence.

24. District Attorney Jones originally pledged support for this program and attended early meetings to discuss how we might move forward. We also received support from police departments in Chatham County.

25. We identified early on the need to locate funds for this program to compensate the court clerk who would support each docket. At one point, the District Attorney's office informed us that they received a grant that could potentially cover this cost.

26. Despite the initial support and the apparent funding, the diversion program has stalled.

27. An additional potential project with District Attorney Jones' office we focused on was court fines and fees. We encouraged District Attorney Jones' office to wipe away any discretionary fine or fee that would negatively impact an individual's financial well-being.

28. Following the introduction of SB 92, District Attorney Jones' office expressed reluctance to work on this project.

29. In light of the changed circumstances, we asked District Attorney Jones' office to work on a modified project. We asked to focus on the creation of a form assessing financial status of a defendant. The form is meant to gauge the impact of a fine or fee and be used to inform decisions made by either the ADA or the court or both.

30. The modified version of this project has not moved ahead either.

31. The effective pause on our work with the District Attorney's office and the overall chilling effect on discretionary practices in the local judicial system has created a major roadblock for reform.

32. As a community, Chatham County has worked on several interventions to make sure our jail is not overpopulated, to invest in alternative programs to incarceration, and to ensure more minimal impacts from the juvenile justice system. Overall, we have had a

good working relationship with District Attorney Jones' office. But because of SB 92 these programs have either paused or discontinued.

33. With more than half the population of our county impacted by the criminal justice system, SB 92 has created a massive obstacle in the way of community progress and racial justice.

34. Without the cooperation of our district attorney, who is now chilled by SB 92, it is hard for Deep Center to move forward toward rectifying our local justice system.

I declare under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Courtney Elizabeth Guthrie-Papy

DATED: August 18, 2023

SIGNED AND SWORN TO BEFORE ME ON THIS 18th DAY OF AUGUST, 2023

Kewaan Drayton
NOTARY PUBLIC

My commission expires: 8/21/2026

KEWAAN DRAYTON NOTARY PUBLIC MY COMMISSION EXPIRES AUGUST 21, 2026 CHATHAM COUNTY, GEORGIA

EXHIBIT 6

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

AFFIDAVIT OF DOMINIQUE GRANT

I, DOMINIQUE GRANT, state as follows:

1. I am a current resident of Atlanta, Georgia. I am over 18 years old.

2. I hold a Master of Business Administration from Wesleyan College. I have a wide range of professional experience, including in both the public and private sectors. I have been involved in various advocacy efforts for much of my lifetime.

3. Since 2022, I have served as the Campaign and Community Organizer for Women on the Rise.

4. Women on the Rise is a non-profit dedicated to empowering the lives and voices of formerly incarcerated women through community organizing, direct services, leadership development, and civic engagement. Women on the Rise advocates for reforms to the criminal justice system, including ending cash bail, reversing the criminalization of poverty, and implementing diversionary alternatives to incarceration. All of our staff are people who are either

formerly incarcerated or directly impacted by the criminal justice system, and our work is guided by the lived experiences of our staff and members.

5. For several years, Women on the Rise has been concerned about overcrowding in jails and judicial backlogs of criminal cases. As a result, we have engaged in efforts to reduce pretrial detention to alleviate overcrowding and reduce periods of incarceration.

6. Among other things, analyses by our partnering organizations—the Justice Policy Board, Legal Action Center, and the American Civil Liberties Union—have found that many women stuck in the Fulton County jail had mental health diagnoses that required medical care and were made worse by extended detention.

7. A confluence of factors has resulted in a backlog especially at the Fulton County jail. Our analysis found that some women were detained and unable to pay bail for as little as $1. Others are detained while facing only misdemeanor charges. COVID-19 also created a slowdown in the court system. It has been hard to catch up ever since the pandemic began in 2020.

8. As a result, the Fulton County jail is overcrowded and people are detained for months with little progress in their cases, many of which could be resolved with diversion or other outcomes instead of extended incarceration.

9. Because of these ongoing concerns about pretrial conditions and extended detention, Women on the Rise has done public advocacy and voter engagement on these issues. Women on the Rise leads voter outreach campaigns on a variety of issues affecting incarcerated women and their families, knocking on over 100,000 doors in Atlanta in 2022.

10. We also lead public information campaigns promoting voting rights for formerly incarcerated people by sharing information on dozens of billboards, posters, and bus shelters

around Atlanta. Women on the Rise also hires its members to assist with outreach and canvassing throughout Georgia.

11. Women on the Rise hosts community events like the 2022 Formerly Incarcerated and Convicted Peoples and Families Movement conference, bringing together hundreds of people for community engagement and voter outreach.

12. Local prosecutors are among the elected leaders we are trying to reach and influence. We recognize that local prosecutors are key participants for change in the criminal justice system.

13. We also believe that it is important for local prosecutors to take public positions on various issues so that the community better understands how they will approach their work. I am concerned about the chilling effect that SB 92 has on the willingness of district attorneys to speak publicly about their positions, policies, and approaches.

14. In addition to this advocacy and community engagement, we provide direct services to women who are incarcerated or formerly incarcerated in Georgia state prisons. This work includes outreach to approximately 1,000 incarcerated women via quarterly newsletters to Georgia state prisons, support groups for formerly incarcerated women, and reentry services. Annually, Women on the Rise serves about 150 incarcerated and formerly incarcerated women in Georgia.

15. Starting in 2022, we began working more with women in local jails. Women on the Rise provided bail for 60 women in Atlanta-area jails and supported 33 formerly detained women with transitional housing.

16. More recently, Women on the Rise began partnering with Grady Hospital to support 100 women a year re-entering the community after being detained in the Fulton County jail.

17. The program entitled "100 Women Rising" supports detained women with mental health diagnoses, including bipolar disorder and schizophrenia. Participants in the program are provided with re-entry services like transitional housing, family reunification efforts, and access to social services and benefits. Women participating in this program are referred by a member of the Fulton County District Attorney's office, a judge, or a public defender involved with their case.

18. 100 Women Rising is intended to decrease recidivism by addressing the holistic needs of participants through healthcare, counseling, economic security, and community-building.

19. Women on the Rise is a participant in the Justice Policy Board, which helps to lead the Diversion Center, an intergovernmental collaboration focused on expanding and strengthening metro Atlanta's continuum of resources to provide alternatives to arrest and incarceration. As part of that body, Women on the Rise is working to get various enforcement actors and the courts to embrace more opportunities for diversion and alternatives to incarceration.

20. SB 92 impacts the work of Women on the Rise, and the communities we serve, by further discouraging diversion programs and alternatives to incarceration.

21. Prosecutors in Fulton County and across Georgia are concerned about punishment or suspension by the Prosecuting Attorneys Qualifications Commission if they support diversion and other alternative programs.

22. SB 92's restriction of prosecutorial discretion encourages prosecutors to continue with trial and sentencing procedures in these circumstances, rather than opting for diversion programs. This burden impacts Women on the Rise's clients, who may face longer detentions, harsher sentences, and a more punitive criminal legal system. This is compounded for women with serious mental health diagnoses and substance abuse disorders, who need prompt access to healthcare, but will likely be denied the care that they need.

23. SB 92 also negatively affects clients of Women on the Rise who face charges in multiple jurisdictions. SB 92's pressure on prosecutors to institute punitive charging practices decreases the likelihood of reaching diversion agreements across jurisdictions. Though Women on the Rise has historically facilitated negotiations with different jurisdictions in the Atlanta area for clients to enter diversion programs, district attorneys now are concerned about retaliation for appearing lenient, even when a client has already served time in another jurisdiction.

24. Rather than recognizing time served and the interests of the detained person, SB 92 may force district attorneys away from cross-jurisdictional agreements and towards punitive indictment and sentencing policies.

25. The judicial system in Atlanta has shown some reluctance to programs as an alternative to incarceration, even with the proven success of organizations like Women on the Rise. SB 92 further restricts the options available to prosecutors beyond incarceration, and keep more women detained and incarcerated in inhumane conditions for longer periods of time.

26. Rather than encouraging formerly incarcerated women to rebuild their lives and re-enter their communities, SB 92 undermines prosecutorial discretion and produces punitive responses to public health issues like mental health and substance abuse. SB 92 causes harm to these individuals and to their families.

I declare under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Dominique Grant

Dominique Grant

DATED: August 18, 2023

SIGNED AND SWORN TO BEFORE ME ON THIS 20th DAY OF AUGUST, 2023

Jennifer Gaita

NOTARY PUBLIC

My commission expires: See attached certificate

VERIFICATION ON OATH OR AFFIRMATION

State of Georgia

County of Clayton } ss.

Subscribed and sworn to (or affirmed) before me

this 20th *Day* day of August *Month*, 2023 *Year*, by

Dominique Grant
Name of Signer No. 1

Name of Signer No. 2 (if any)

Jennifer Gaita
Signature of Notary Public

JENNIFER GAITA
My Commission Expires
NOTARY PUBLIC
April 12, 2027
CLAYTON COUNTY, GEORGIA

Place Notary Seal/Stamp Above

Any Other Required Information (Residence, Expiration Date, etc.)

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: Affidavit

Document Date: August 18, 2023 Number of Pages: 6

Signer(s) Other Than Named Above:

EXHIBIT 7

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

AFFIDAVIT OF MAZIE LYNN GUERTIN

I, MAZIE LYNN GUERTIN, states as follows:

1. I am more than eighteen years of age and reside in Georgia.

2. I am the Executive Director & Policy Advocate of the Georgia Association of Criminal Defense Lawyers (GACDL). Prior to joining the staff of GACDL, I practiced criminal defense law, representing indigent clients in Georgia.

3. I provide this affidavit in my individual capacity.

4. I have developed an understanding of the nature of criminal practice in Georgia's varied judicial circuits through my historical work as a criminal defense lawyer, current work as GACDL's Executive Director and Policy advocate, discussions with current practitioners, my service on State Bar of Georgia Committees, and regular observation of Judicial Council general and committee meetings.

5. Georgia criminal defense lawyers practice across the state of Georgia, both in Circuit Public Defender offices and private practice. Private-practice attorneys represent indigent people accused of crimes on a contract basis or pro bono.

6. Prosecutorial discretion, including but not limited to whether to pursue certain charges or invite people facing criminal prosecution to participate in pretrial diversion programs, is essential to the smooth operation of the criminal courts; it is also essential to the fair treatment of every person facing prosecution.

7. Prosecutors must be free to clearly communicate their approach regarding such discretion. Likewise, when criminal defense lawyers know the criteria for exercising discretion (such as by a pretrial diversion program), they can better contribute to the smooth and fair operation of the court processes.

8. If prosecutors are deterred from exercising their discretion, or slowed by SB 92's new, individual-review duty, the delay in addressing cases pending in Georgia's criminal courts will collapse the system on a scale greater than that experienced during the recent pandemic protocols. Such an approach will harm productive and efficient work between the prosecution and defense bar.

9. The resulting slowdown would threaten to overwhelm the defense bar's already swollen caseloads raising concern that a tipping point could be reached where achieving competent representation for each person accused of crime becomes challenging, if not impossible.

10. Protracted prosecution timelines carry with them the predictable consequences of prolonged pretrial incarceration, lost jobs and family disruption—the types of collateral consequences that can burden not only families, but also obliterate government budgets.

I declare under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Mazie Lynn Guertin

DATED: August 21, 2023

SIGNED AND SWORN TO BEFORE ME ON THIS 21 DAY OF AUGUST, 2023.

NOTARY PUBLIC

My commission expires: 12/03/2024

EXHIBIT 8

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

AFFIDAVIT OF REVEREND ANTHONY MAURICE BOOKER

I, ANTHONY MAURICE BOOKER, state as follows:

1. I am a resident of Augusta. I am over 18 years of age.

2. I have been a resident of Augusta for the past 33 years.

3. I am the Pastor of the Broadway Baptist Church. I have been a pastor for 26 years. I worked previously at the New Hope Baptist Church of Harlem, also in Columbia County, for 23 years. I have led Broadway Baptist Church for the past three years.

4. During my time as a Pastor, I have served as the State Coordinator of the State Baptist Youth and Young Adult Convention of General Missionary Baptist Convention of Georgia. In addition, I have been on the executive board of General Missionary Baptist Convention and served as a member of the Augusta-Richmond County Historic Commission.

5. As a Pastor, I am involved in the affairs of families in my church as well as families in the community. With regularity, I go to court to attend hearings and trials. Sometimes,

I sit and observe as a supporter of a defendant, witness, victim, or family member. Sometimes, I offer my perspective to the court, especially when it is requested. I have witnessed proceedings in juvenile court, criminal court, and elsewhere.

6. Through my pastoring, I have observed the impacts of the criminal justice system on individuals and families in my church. I know that many people are profoundly harmed by crimes and many who get involved with the criminal justice system struggle.

7. I also serve as the President of the Baptist Minister Conference of Augusta. The Conference is comprised of 67 ministers from the area. It meets at least on a monthly basis. The Conference is engaged on any number of issues impacting our communities from public safety to criminal justice and voting rights. We also focus on schools, our youth, and their futures as well.

8. Through the Conference, I have come to meet and connect with many elected officials who represent Augusta and the surrounding areas. I have had a chance to converse with them and ask them pointed questions. I also have had a chance to work with many elected officials in advocacy, improvements to our communities, and other efforts at the state and local levels.

9. Our county is fortunate to be represented by District Attorney Jared Williams.

10. District Attorney Williams is smart, personable, and very empathetic. Having spoken with him on numerous occasions and having observed his work as district attorney, I believe that he understands that no case is a cookie-cutter. In his mind, each situation requires individualized attention.

11. In addition, District Attorney Williams is compassionate. He understands the ways that the criminal justice system can impact individuals. He cares about victims, and he is concerned about the long-term effects of incarceration. In my mind, he is a true seeker of justice.

12. District Attorney Williams' election was very meaningful to our community. To start, it is powerful to have someone who looks like us—we are a majority black community—serving our community at the highest levels. In that way, he serves as a role model for the youth of our community.

13. District Attorney Williams is also very present in the community. He shows up at church, community events, and other functions. He is approachable and available. He really lives up to the term of public servant. Not every district attorney has served Augusta in this way.

14. He is also committed to serving our community by ensuring that our rights are protected. He cares very much about public safety, and he wanted to make sure that those who have been involved in the criminal justice system can make meaningful contributions. For that reason, he and his office have dedicated resources to expungement of criminal histories.

15. I am concerned about SB 92 and the threat it poses to District Attorney Williams and others like him. I believe that SB 92 was passed to remove prosecutors like District Attorney Williams, not because he is a bad prosecutor but because the powers that be in Atlanta disagree with his approach and do not like him.

16. If District Attorney Williams were to be suspended or removed by the Prosecuting Attorneys Qualifications Commission, it would be devastating to me. It would mean that the Commission believes that our community members do not have good judgment.

17. Our community is empowered to elect district attorneys. That is our right and our obligation. If the district attorney does not do a good job, they can be removed in the next election. We do not need a Commission based in Atlanta to tell us what our community needs from a prosecutor.

18. If District Attorney Williams were to be removed and disqualified from running for District Attorney for ten years, it would have a profound impact beyond his office and the criminal justice system. It would harm our entire community. There are a lot of people with apathy about the system and government. They think that their votes do not matter already. The District Attorney's removal by the PAQC would make the apathy, frustration, and disempowerment even worse.

19. District Attorney Williams has been limited by the Georgia Legislature already. When he was elected, one of the counties in the judicial circuit—Columbia County—decided that it did not want to have him as district attorney, so they created their own judicial circuit through the Legislature.

20. I am concerned that the PAQC will go after District Attorney Williams, even though his removal would be unwarranted and unjustified.

I declare under pains and penalties of perjury that the foregoing is true and correct to the best of my knowledge.

Anthony Maurice Booker

DATED: August 18, 2023

SIGNED AND SWORN TO BEFORE ME ON THIS 18 DAY OF AUGUST, 2023

STATE OF GEORGIA NOTARY PUBLIC
NANCY L ROSS
Richmond County
My Commission Expires
October 19, 2026

NOTARY PUBLIC

My commission expires:

IN THE SUPERIOR COURT OF FULTON COUNTY
STATE OF GEORGIA

STONE MOUNTAIN JUDICIAL CIRCUIT DISTRICT ATTORNEY SHERRY BOSTON, *et al.* Plaintiffs, v. JOSEPH COWART, *et al.*, in their individual and official capacities, Defendants.	Case No. 2023-cv-383558

CERTIFICATE OF SERVICE

I hereby certify that I have this date filed a true and complete copy of the foregoing Motion for Interlocutory Injunction and Memorandum of Law in Support of Plaintiffs' Motion with the court's e-filing system and electronically served a copy of the same on the below-identified counsel:

Charles Boring (cboring@robbinsfirm.com)
Anna Edmondson (aedmondson@robbinsfirm.com)
Carey Miller (cmiller@robbinsfirm.com)
Josh Belinfante (jbelinfante@robbinsfirm.com)

Filed on this 24th of August, 2023

/s/ David Dreyer
David Dreyer, Esq.
141322