MARICOPA COUNTY ATTORNEY ACCOUNTABILITY QUESTIONNAIRE

The Maricopa County Attorney holds extraordinary power in Arizona’s criminal legal system. Maricopa County is the fourth-largest metropolitan area in the country and accounts for nearly half of Arizona’s population. In 2018, Maricopa County sent 8,796 people to prison, accounting for roughly 58% of all prison admissions. Accordingly, how this office exercises discretion at each stage of criminal proceedings—from initial charging decisions to the sentences they seek to impose — has a huge impact on the state and determines whether our system is fair and just.

With the nation’s fifth-highest imprisonment rate and a static prison population, Arizona’s overreliance on incarceration is both costly and ineffective: it exacts enormous financial, emotional, and social costs on communities while exacerbating racial disparities and wasting finite resources. And harsh punishment does not improve public safety—the threat of increased sentences simply does not deter crime, either among the general public or convicted persons, and, because the experience of imprisonment is criminogenic, the imposition of longer terms of incarceration may actually heighten the likelihood that incarcerated individuals will reoffend upon release. Incarceration also entirely fails to address underlying issues or needs that lead to criminal activity in the first instance.

Given the influence the Maricopa County Attorney wields as a policymaker and civic leader with the legislature, state and local officials, and other community stakeholders, this office should deploy its substantial power to advance justice through policy reforms. This questionnaire evaluates whether county attorney candidates are committed to implementing the principles that will end mass incarceration and build a safer and more just America.

1. Poverty and the Criminal Justice System
2. The Prosecution and Sentencing of Juveniles
3. Recognizing Capacity for Change
4. Transparency and Accountability to the Community
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#1: POVERTY AND THE CRIMINAL JUSTICE SYSTEM
Money Bail

Arizona’s Constitution contains a presumption of pretrial release with a few exceptions for more serious offenses. Nevertheless, money bail is set in most criminal cases in Arizona.

Short Answer

- Do you think money bail is useful? For what purposes?

   In short, no. True cash bonds, where a person must put the entire amount up, are only appropriate where there is demonstrable proof both that a person can pay the bond (so it isn’t just a lazy, disingenuous substitute for litigating non-bondability) and that the cash bond will actually mitigate flight risk. Such cases are very rare in my experience, and as such, use of money bail makes little sense.

- Do you believe there are any problems with using money bail in most cases? If so, what?

   Yes. Money bail as a condition of release has no place in our justice system. It operates to keep the poor behind bars, which severely disrupts their lives and the lives of their family. While someone’s behind bars, they might lose their job, their home, their vehicle. Sometimes they even lose custody of their children. Holding someone pretrial also increases the likelihood that they will falsely plead guilty.

   In short, holding someone pretrial not only violates one of the fundamental values of our criminal legal system—“innocent until proven guilty”—but it causes massive, irreparable harm.

- If you believe the money bail system should be replaced, and you had a blank canvas, what is your ideal system for determining pretrial release?

   My ideal system for determining release treats liberty as the norm and uses restrictions on freedom as the exception to the rule. Any restrictions on freedom must be implemented without bias, and data must be collected to ensure that any implicit biases are identified and, where possibly, structurally eliminated.

   I would implement these three changes immediately:
1. **For Cases Initiated by Arrest:** I will direct my line attorneys to ask that individuals be released on their own recognizance. Where the courts are inclined to require additional assurances, we will remind the court that our law requires it use only the *least restrictive conditions* necessary to secure continued appearance. If the court insists on some form of bond, I will prepare my attorneys to educate the court about the existence and heightened efficacy of unsecured appearance bonds, which do not require any money be paid unless the individual fails to appear at a future court date.

2. **For Cases Initiated by Indictment:** I will direct my line attorneys to commence proceedings with a summons, rather than an arrest warrant. If the court will not permit certain cases to commence by summons, I will instruct my line attorneys to request unsecured appearance bonds, rather than cash or surety bonds, to trigger release upon service by arrest warrant.

3. **Guarantee Support for Exercising Discretion:** The Maricopa County Attorney's Office has historically blamed line prosecutors in situations where a defendant is released from custody pending trial and that defendant then commits another offense. Particularly where the on-release offense is high profile, our elected officials have thrown the line attorney under the proverbial bus, often firing them to save face in the public eye, delivering a clear message that. This practice created a culture of fear where line attorneys (rightly) believed they risked their own livelihood by failing to secure pretrial detention, even if they believed there was little or no flight risk. This is unacceptable.

Instead, my practice, and my promise to my line attorneys, will be to take responsibility *myself*, as the elected official, whenever *my* policies come under public scrutiny. So long as my attorneys are doing their jobs and adhering to the justice-reform policies we value, I will defend their judgment and take the proverbial heat myself.

- What concerns do you have about possible alternatives to money bail?
I have three concerns with most proposed alternatives to money bail. First, these alternatives often come with additional fines and fees that will undoubtedly perpetuate existing inequities. Second, I’m concerned that alternatives—like electronic monitors—unnecessarily surveil individuals, invite unwarranted scrutiny for reasons beyond the defendant’s control, such as technological failure or human error, and they fail to take seriously our fundamental principles, that the accused is innocent until proven guilty and incarcerating the innocent is categorically unacceptable. Finally, I’m worried that any alternative we adopt will be abused by the judiciary in order to facilitate detention rather than ensuring continued appearance. For example, “risk assessments” based on an individual’s social and legal history inject inherently unreviewable subjectivity and perpetuate implicit biases.

In sum, I am skeptical that alternatives could recreate our current system (release for the privileged, custody for the masses) in practice, if not form.

Yes/No

- Will you adopt a written bail policy where your assistant county attorneys advocate for release on unsecured bail without conditions for all individuals unless there is clear and convincing evidence that the person has attempted to flee to evade prosecution or poses a clear and identifiable risk to another person?

  Yes.

- If release on unsecured bail is insufficient to protect against willful flight or an identifiable risk, will you require that assistant county attorneys only seek the least restrictive conditions necessary to accomplish those goals?

  Yes, and the requests will be reviewed at regular intervals to guarantee that only the least restrictive conditions are imposed.

- Will you commit to only requesting GPS or electronic monitoring after a hearing where clear and convincing evidence reveals no other condition can protect the safety of others or ensure the person returns to court?

  Yes.
• Will you advocate for a policy ensuring that costs associated with GPS or electronic monitoring are covered by the appropriate government entity?

    **Yes. Passing along the cost of GPS or electronic monitoring only perpetuates the financial inequality of the system.**

• Will you require that, if an assistant county attorney determines that pretrial detention is necessary to protect the physical safety of other persons, he or she will follow the constitutional process to obtain an order of detention, instead of simply asking for an unattainable monetary bail amount?

    **Yes. This process is necessary to ensure due process and restore power to judges who must act as neutral arbitrators.**

• Will you designate an attorney to serve as a bail supervisor to ensure that bail requests are made uniformly and that all prosecutors faithfully execute your policy?

    **Yes. I will also support equal representation during initial appearances, where the court sets release conditions. Defendants in Maricopa County often lack counsel at their initial hearings. That is a critical stage, and the Sixth Amendment compels us to provide counsel.**

• Will you commit to regularly reviewing jail data to ensure that persons who have been ordered released or do not pose a risk to the physical safety of other persons in the community are not being unnecessarily detained?

    **Yes.**

• Will you agree not to use conditions of release or pretrial detention as a bargaining tool at any phase of the pretrial process?

    **Yes. The presumption of innocence demands it.**

**Accessibility of Diversion Programs**

*Pretrial diversion creates opportunities for people accused of an offense to avoid the collateral consequences of a conviction, which can be detrimental to future employment, housing, citizenship, and education, and can lead to increases in recidivism. These programs require fees and often payment of restitution.*
Short Answer

- Should an individual who is eligible for diversion, but unable to pay fines or restitution because of disability or poverty, be able to participate in pretrial diversion? Are there any limitations or exceptions to your answer?

  **Yes. Everyone must be given equal access to opportunities for diversion, regardless of ability or financial status, as a matter of equal protection, due process, fundamental fairness, not to mention that it’s just smart crime prevention policy to avoid pitfalls that further incapacitate those who are already vulnerable.**

  **There are no limitations or exceptions to my answer.**

Yes/No

- Will you eliminate all fees, costs, and fines associated with pretrial diversion programs?

  **Yes.**

- If fees cannot be eliminated in all cases, will you create a robust fee-waiver program?

  **Yes. Financial disparities should be eliminated from our justice system to the fullest extent possible.**

  - Will you allow individuals who are unable to pay restitution because of disability or poverty to complete diversion, even where there is monetary loss suffered by a victim in the case?

    **Yes. A person’s financial ability should never interfere with equal access to justice. I have extensive experience litigating and training other lawyers in the vicissitudes of Arizona’s criminal restitution laws, and I can say with confidence that crime victims suffering economic loss will be better served by providing opportunities to reintegrate offenders into our society and economy.**

The Criminalization of Poverty

*Criminal justice systems in Arizona disproportionately harm people living in poverty. Whether through the imposition of fines and fees as a condition to resolve cases or*
through laws that effectively criminalize homelessness, county attorneys have imposed a poverty penalty on many people within our communities.

Short Answer

- Does a county attorney have a responsibility to ensure that individuals are not treated differently in the criminal justice system based on their wealth or lack thereof? If so, what strategies would you implement to ameliorate existing inequities?

  Yes, and unfortunately our legal system, for too long, has treated the haves and have-nots very differently. To ameliorate existing inequities, I will implement the policies discussed above. I will end money bail, waive fines and fees, and create accessible diversion and treatment opportunities. I will also reject submittals for minor property offenses, like shoplifting with an artifice, and offenses criminalizing homelessness, like commercial trespass.

  It is a day one priority for me to put an end to our tradition of permitting economic factors to drive and extend community supervision. Probation can hinder employment and access to safe, clean housing, both of which interfere with successful reintegration. We will no longer consider payment of fines, fees, and surcharges when making discretionary recommendations about whether to discharge probationers.

  Second, we have “undesignated” felonies in Arizona (like “wobbler” offenses in California), which give our courts discretion to convert most class 6 and some class 4 felonies into misdemeanors at sentencing or the conclusion of a sentence. Currently our prosecutors strip judicial discretion as a matter of course by inserting boiler-plate language into plea agreements requiring probationers to pay all fines, fees, and restitution before the court may consider misdemeanor designation. This often results in a permanent felony record lasting years beyond the completion and discharge from probation. Ending this practice is also a day one priority.

- What role, if any, should the repayment of fines, restitution, or court costs play in resolving of an individual’s criminal case?

  Currently, the majority of our fines and court costs go to fund the legal system, creating a pay-to-play scheme that undermines its
legitimacy. Ability to pay should have no place in resolving an individual’s criminal case. To the extent the administration of justice requires subsidization with certain fees and costs to function (like administrative filing costs that help fund our civil courts), we must not consider ability to pay with the resolution of criminal offenses and we must create robust, accessible hardship waivers for such mandatory fees and costs (also like administrative filing costs in civil cases).

With that said, there may be a role for restitution to play in resolving an individual’s case, as long as inability to pay is not a factor, especially as we move away from a “tough on crime” model and towards a restorative and transformative justice model that considers harms against competing equities according to what’s in the entire community’s best interests.

- Is the County Attorney the most appropriate office for handling offenses that are committed because of poverty or homelessness, such as many cases of trespass, theft of necessities, panhandling, drinking in public, or open container violations? If not, who might be the best public or private actor?

No. We’ve been using our criminal justice system to solve society’s problems for far too long, this “us vs. them” culture is a massive contributor to the mass incarceration crisis, and it ends the moment I swear the oath of office.

We can’t incarcerate our homelessness problem away. The solution is changes to our economic and development policies—it’s free or affordable housing, raises to the minimum wage, expansion of the social safety net, and investments in education and jobs training. This is why, when I’m elected County Attorney, our office will no longer prosecute low-level property offenses and offenses motivated by poverty. This is also why I am already developing relationships and strategies with our county’s Board of Supervisors and the heads of other county-wide offices, so we can collaborate to build non-criminal resources to address poverty, particularly given the massive tax savings my policies will generate for us at the state and local level.

Moreover, these are often local issues. Maricopa County is the fourth largest county in the country, and it contains twenty-four (24) different independent municipal governments. The County Attorney
can partner with local municipalities who can set up community courts with the county’s assistance. One such example is in the City of Mesa, where they recently launched a proto-community court. Explaining the need for a community court program to address poverty-based offenses, the City of Mesa, which has historically been a conservative, economically advantaged, “tough on crime” community, acknowledged: “Our traditional criminal justice model does not and cannot address these [poverty-based] issues. Relying on jail as the sole sanction does not address the underlying problems that drive recidivism by this population, and creates cost with little or no result.”

- How should county attorneys handle such offenses?

**They should refuse to prosecute them.**

**Yes/No**

- Will you adopt policies to assist individuals in resolving drivers’ license suspensions, and any resulting misdemeanor traffic offenses, originally imposed because of non-payment of fines or fees?

  **Yes.**

  *(Though I should mention that many of the fines/fees for misdemeanor traffic offenses are controlled by independent municipal governments, and this office does not have the unilateral ability to waive those.)*

- Will you decline to seek incarceration based upon a person’s failure to pay fines, fees, court costs, or restitution, including child support, unless there is clear and convincing evidence that the individual is able but willfully refuses to pay?

  **Yes.**

- Will you presumptively decline to prosecute misdemeanor offenses when they are the byproduct of an individual’s homelessness or poverty, such as public urination, open container violations, theft of necessities, and trespass?

  **Yes.**

#2: THE PROSECUTION AND SENTENCING OF JUVENILES
Established science has demonstrated that children’s brains are not fully developed until they reach the age of 25. As a result, juveniles possess a “lack of maturity and an underdeveloped sense of responsibility,” tend to be “more vulnerable or susceptible to negative influences and outside pressures, including peer pressure,” and are “more capable of change.” Yet, to support its efforts to maintain juvenile life without parole, the previous Maricopa County Attorney commissioned a report rejecting this science and arguing that the judgment and impulse control of teens is not “meaningfully different from adults.”

Short Answer

- When, if ever, do you believe a child should be prosecuted in adult court? What factors are most important to that determination?

I don’t believe a child should ever be prosecuted as an adult, in adult court.

- Do you believe that criminal consequences currently imposed on children in Maricopa County are too lenient or too severe? If so, why?

Too severe—our County Attorney, like Cannizzaro in New Orleans, is still prosecuting children as adults and is still seeking lengthier sentences, including life sentences, in contravention of established scientific consensus by relying on and promulgating a junk-science “report” her predecessor commissioned at a taxpayer cost of over $500,000. We should not be holding children to the same standards as adults, nor should we be forcing them to mature inside jails and prisons.

We must also adhere to what has been established by Miller and Montgomery to address our existing population of juvenile lifers. Those individuals must have an opportunity for release, and they will be a priority for the work of my conviction integrity unit.

- Arizona law unilaterally affords county attorneys discretion to charge juveniles in adult court when a child is aged 14 or older for a wide range of felony offenses. How would you instruct your line attorneys to exercise that discretion?

I will instruct my line attorneys not to prosecute children in adult court. Where State law requires charges for certain offenses be
filed in adult court, we will seek every legal avenue available to exercise charging and settlement discretion to avoid that requirement, and we will employ crime victims who understand the benefits of restorative and transformative justice mechanisms and the flexibility afforded by a community oriented, data driven justice policy to help educate other crime victims and the public at large about the long-term damage a more traditional approach can have on juveniles, victims, and the community.

- Should a juvenile defendant ever be detained in custody pending trial or adjudicatory hearing? Under what circumstances?

  No.

- Do you think it is appropriate to seek a sentence of life in prison without parole for a person under the age of 25? Under the age of 18? Why or why not?

  No. The United States Supreme Court in *Miller* unequivocally stated that mandatory life without parole sentences for juveniles are banned and such sentences should only be imposed on the “rare juvenile offender whose crime reflects irreparable corruption.” The science of adolescence tells us that the human brain is not fully developed until at least age 25. We should be treating age 25 as an age of maturity and understand that behavior before age 25 should be considered as less culpable than behavior after age 25. Juveniles and young adults are not the same as adults; they are more impulsive, more susceptible to peer pressure and lack full capacity to appreciate the consequences of their actions. Furthermore, Arizona prisons are not equipped to promote and facilitate rehabilitation. They are not healthy environments for developing youth.

- Can youth be an aggravating factor in a case? Under what circumstances?

  No. Science doesn’t support this and probably never will.

- The term “school-to-prison pipeline” often refers to the disproportionate tendency of minors and young adults from disadvantaged backgrounds to become incarcerated, because of increasingly harsh school disciplinary action and prosecutorial practices. Do you believe the “school-to-prison pipeline” is a problem in your jurisdiction? If so, what steps, if any, would you take to alleviate it?
Yes, the “school-to-prison pipeline” is a problem in Maricopa County. I sit on Arizona’s Commission on Minorities in the Judiciary, which is tasked with submitting our annual statewide report card on juvenile interactions with the justice system. I can tell you from years of aggregating and reviewing the data that disadvantaged juveniles are extremely disproportionately impacted here.

I will support the repeal of “zero tolerance” policies and the implementation of pre-arrest diversion programs with law enforcement agencies. I will work to create alternative school and/or community courts to hold juveniles accountable to one another and rely on clear deferred prosecution contracts with case-specific terms. I will also lobby to invest the vast majority of the money we save by ending mass incarceration in Arizona in our most underfunded and disadvantaged school districts.

Education and economic opportunity are hands down the most effective tools for reducing crime and recidivism.

- Do you believe children should be prosecuted for curfew violations, school fights, and for truancy? Why or why not?

   No. These violations are disproportionately used against people of color and those without adequate financial resources. Placing a child in the criminal justice system also negatively impacts their future development.

Yes/No
- Will you presumptively decline to prosecute school disciplinary matters where there is no use or threat of force resulting in serious physical harm?

   Yes.

- Will you commit to educating yourself and all members of your office who handle cases involving juveniles about the science relating to brain development and the many ways in which children are profoundly different from adults in their functioning, perception of risk and consequences, impulse control and ability to resist peer pressure?

   Yes.
• If you ever seek to transfer a juvenile to adult court, will you only do so in the rare case where there is clear and convincing proof that no substantial opportunity for the child’s rehabilitation exists in the juvenile system, and transfer is necessary to protect the physical safety of members of the community?

Yes, but I have no intention of transferring juveniles.

• Will you work with defense counsel and the Public Defender to identify reputable psychologists, developmental experts, and mental health professionals respected by all parties, and hire from that list of experts when the State requires psychological, competency or sanity evaluations in juvenile criminal cases?

Yes.

• Will you consider, with an open mind, all mitigation materials discovered by or presented to your office in juvenile cases, including resentencings?

Yes.

• Will you commit to never seek or defend a life sentence without parole eligibility for any juvenile, and to only seek a life sentence with parole eligibility in rare circumstances where the child has personally committed a premeditated first-degree murder characterized by significantly aggravated circumstances?

Yes.

• Where a juvenile commits a homicide, where circumstances warrant is it appropriate to charge him or her with an alternate offense, such as manslaughter or attempted murder, to avoid mandatory sentencing provisions requiring a life term?

Yes.

#3: RECOGNIZING CAPACITY FOR CHANGE

Short Answer

• Do all people who have committed crimes have the capacity to change over time? If not all, how do you determine who does have that capacity? How does that belief influence your approach to sentencing?
I believe all individuals have the capacity to change and can be redeemed.

- What should be the goal of diversion programs?

To give individuals case-specific tools and resources they need to break the cycle that brought them into contact with the criminal justice system while also keeping their criminal record unblemished.

Rule 38, Ariz. R. Crim. P., vests broad discretion in the State to determine what constitutes a diversion, or “deferred prosecution program,” for which a defendant is eligible. Moreover, education and employment opportunity are the number one most determinative factors in reducing / preventing crime and recidivism. My plan is to dramatically increase the scope of our diversion programs to include a broad range of tools and resources designed to help not only with addressing the underlying causes of an individual’s contact with the system, like untreated addiction or mental illness, but also to facilitate post-diversion success, like partnerships with night schools, trade and vocational schools, and community colleges to promote legal economic opportunities for program graduates.

- What are the biggest flaws in Maricopa County’s current diversion programs?

There are many flaws in our current system.

First, diversion in Maricopa County is financially inaccessible. In 2018, Civil Rights Corps filed a lawsuit against Maricopa County alleging, among other things, that its diversion program, operated by TASC, Inc., was not accessible to the indigent. The overall program cost is well over $1,000, which includes a steep application fee. Maricopa County’s interim County Attorney recently agreed to waive the application fee for indigent program participants, but that’s small comfort to those who can’t afford the cost of the many random drug and alcohol screenings, which can amount to a monthly bill in excess of $225. Moreover, if you miss a single payment or drug test, you’re out of the program and must start all over, assuming you can persuade the State to give you another shot and that you can afford to start over.
Second, it is motivated by profit. Maricopa County profited $15 million from its between 2006 and 2016 because the roughly $650 of the cost a participant pays comes back to the County. We cannot incentivize the State to set people up to fail just to get them to pay time and again.

Third, the Scope of services is abysmal. There are only two different programs, a drug diversion program administered by TASC and the Felony Pretrial Intervention Program (“FPIP”) for non-drug related felonies. Under my administration, we will not be prosecuting addiction. Let me repeat, we will not be prosecuting addiction. I will work with the legislature and the Board of Supervisors to create meaningful and accessible substance use treatment services, safe use centers, and other non-criminal programs designed to destigmatize and decriminalize our myriad public health crises. Accordingly, we will only need drug diversion programs when an individual commits a serious offense that causes actual loss in the community, but the offense was motivated by untreated substance use disorder. As for FPIP, I’ve represented over 1,000 individuals charged with felony offenses in Maricopa County Superior Court. I have gotten FPIP once. Nobody in that office knows what it is or how to use it. We need to educate prosecutors about available public resources, create a broad scope of different programs with the discretion vested in us by Rule 38, Ariz. R. Crim. P., and tailor diversion programs to the individual, with a primacy on education and jobs training programs above all others.

Third, the rigidity, profit motive, and one-size-fits-all nature of our current system leads to a massive fail rate, and prosecutors typically only allow people one, maybe two attempts to complete diversion. Recovery is often two steps forward, one or more steps back. Negative reinforcement does nothing to destigmatize substance use and set people up to succeed in the first place, so we need to redesign treatment programs to create positive, achievable success metrics beyond purely rewarding sobriety and penalizing relapse.

Finally, it is not used enough. There are too many reasons the County Attorney currently cites to deny a person entry into a diversion program, not to mention the many that never go mentioned, like racially motivated biases, both implicit and invidious. When providing diversion programs we have to keep in mind that people
can make mistakes in a variety of ways, our criminal code is robust and police officers know that. For instance, people who are charged with personal possession of drugs should not be ineligible for diversion programs simply because a possession charge is accompanied by a property crime or offense against public order.

- Should diversion be limited to people with no criminal history or people charged with certain crimes? Why or why not?

  No. Diversion should be considered in all cases where it would serve the ends of justice. Diversion is a tool that should be used liberally. The idea of redemption is that people desist from crime over periods of time, in order to recognize that we must give people opportunity without condemnation for their past.

- In general, what role should someone’s prior convictions play in the resolution of a pending case?

  Little to none. The current sentencing structure in Arizona allows prosecutors to use mandatory minimums as a weapon. Many people are punished for their past convictions instead of their current behavior. I will make sure that my attorneys evaluate the merits of each case and work towards a resolution that addresses that case alone. We need to shift to a harm-based, just-result calculus where we “staff up,” rather than “deviating down” from yesterday’s failed tough-on-crime policies. Only when we can justify, in front of all of our progressive colleagues, that justice requires allegations of prior convictions should we be doing so.

- When, if ever, is it appropriate to seek a “repetitive offender” enhancement or habitual offender sentencing?

  We will “staff up,” rather than “deviate down” when determining what the appropriate penalties are for addressing a particular harm. That means that we will only allege “repetitive offender” enhancements when prosecutors can articulate the need to do so to their peers and supervisors, and they collectively determine that the non-repetitive statutory range of the offense is demonstrably insufficient to protect other persons in the community from serious physical or financial harm.
When, if ever, is it appropriate to allege so-called “Hannah priors,” the practice of using offenses in the same indictment—even if they occurred hours apart, and even if the person has never before been convicted of a crime—to obtain a repetitive offender enhancement?

Never. The legislature was right last year when it tried to fix this issue. This is one of the greatest injustices of the tough-on-crime, mandatory minimum era; it not only strips discretion from courts, but it encourages law enforcement to sit back and allow harmful conduct to continue in order to secure more leverage over a suspect when the ultimate arrest is made.

A recent Arizona Court of Appeals decision rightly abrogated the State’s ability to impose Hannah priors in fraud/theft cases where the overarching fraud spans the same period as each individual theft, and our legislature is once again poised to eliminate the use of Hannah priors entirely, which I completely support.

What role, if any, do you believe a prosecutor should play in advocating for parole?

Arizona has eliminated parole for the vast majority of inmates and instituted “community supervision.” There are limited amounts of inmates who are eligible for parole. For this incarcerated population, the County Attorney should advocate for compassionate or for clemency release before the Arizona Board of Clemency.

Will you expand the use of diversion programs by making pre-plea diversion available to individuals with prior arrests and convictions?

Yes.

Will you publicly support efforts to make expungement more broadly available and easier to seek?

Yes.
• Will you adopt a policy in which your office will presumptively not file any multiple bill or seek habitual offender sentencing, but instead only pursue enhanced penalties when a supervisor determines that the statutory ranges are demonstrably insufficient to protect other persons in the community from physical harm?

  Yes. This is exactly what I mean when I say we will “staff up,” rather than “deviate down,” and it is a necessary step to bring about cultural and perspective change.

• Will you publicly support legislation that repeals Arizona’s strict time served laws, which require individuals to serve 85% of all prison sentences regardless of their behavior and readiness for release, so that rehabilitated individuals can earn early release from prison?

  Yes.

• Will you develop policies so that prosecutors can advocate for parole eligibility for those who have shown promise while incarcerated and can be safely released?

  Yes.

#4: TRANSPARENCY AND ACCOUNTABILITY TO THE COMMUNITY

Engage with the Community You Represent

Providing the community with information about arrest rates, charging decisions, and sentencing policies helps build and maintain trust between the office and the community it serves.

Short Answer

• How do you intend to ensure the community can hold you accountable for fulfilling your campaign promises?

  I plan to develop a community review board for the Maricopa County Attorney's Office because transparency and accountability are empty objectives if they are not accompanied by meaningful action. We will begin by inventorying previous cases, priorities, and costs incurred by each. We will regularly reevaluate these inventories, with help from empowered stakeholders on the community review board. I envision an auditor/monitor model where the statistics of charging
decisions, sentencing outcomes and pretrial release are reviewed to identify disparities and implicit bias.

I also plan on partnering with public interest groups and universities to study disparate impact and implicit bias. We already have several great ideas to implement structural changes that will mitigate implicit bias. (I have little confidence that we can “train away” biases.) But I also acknowledge that I don’t always have the right answers, so we will also rely on our community review board and our community partnerships to recommend additional structural policy changes, both to empower the community and to seek out the best, most effective reforms to restore public trust and confidence.

I will also hold myself, and my employees, to higher ethical and professional standards than the minimums required by our constitutions, statutes, and rules of professional conduct. We will engage with the community respectfully, we will neither celebrate nor reward punishment, and we will not tolerate language or behavior that otherizes and dehumanizes vulnerable individuals and communities.

- What information do you believe community members should have regarding office policies, practices, and outcomes? What, if anything, should be kept confidential?

I believe that transparency is key to building trust with the community that the County Attorney serves. The community should have as much information as possible without jeopardizing ongoing investigations or the safety of my employees or running afoul of our legal obligations to protect identifying information of victims and minors.

Ideally, I would like to implement regularly updated, searchable database of criminal case information that can be used to study and analyze prosecution and law enforcement patterns across myriad data points in order to encourage a more complete understanding of implicit biases and systemic injustices.

Yes/No
- Will you track and regularly publish office data—the number and types of misdemeanor and felony cases filed each month, disposition statistics, pretrial
incarceration rates and lengths of stay by offense category, and average bond for each class of offense—so that the community can determine the need for reform and the effectiveness of new policies?

Yes.

- Will you track racial information at all steps of the prosecution process and publicly report any significant racial disparities that arise?

Yes.

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

Yes, and I’ve been diligently educating myself and exploring affirmative hiring practices that comply with Arizona and Federal government administration and employment laws in order to thread this proverbial needle.

- Will you conduct open sessions with the community at least once every month and create other public channels for community members and organizations to engage with the office?

Yes.

Public Integrity Prosecutions
2018 saw the highest number of officer-involved shootings ever recorded in Phoenix, and in 2019 several incidents revealed racist or violent tendencies of some Phoenix police officers. Mayor Kate Gallego and Police Chief Jeri Williamson have pledged greater accountability and transparency for the police department, and have even fired officers at the center of the controversies. County attorneys must be committed to independently investigating and prosecuting all persons engaged in criminal activity, including police.

Short Answer
- What is the most effective way to address officer-involved shootings and officer misconduct?

To start, we need independent investigations, transparency, and prosecution if necessary. We also need to put officers on publicly available Brady lists so that their misconduct is not repeated. A true
Brady list will establish the foundation for a no call list, officers who have habitually engaged in misconduct will not be called as witnesses, cannot substantiate criminal charges and will eventually be taken off the streets.

Moreover, I have the courage to place officers on the no call list for reasons beyond formal discipline. For example, investigative journalists from the Phoenix New Times recently uncovered an epidemic of racist, white supremacist social media communications by local officers just last year. How can Black, LatinX, and Native jurors and defendants be expected to put their trust in racist actors like these?

Finally, I support the creation of constitutional small claims courts, which could also put pressure on law enforcement agencies to remove problem actors from regular contact with the public. Data gathered by such courts could also help us identify systemic problem areas and guide institutional investigations, and even assist the work of a conviction integrity unit dedicated to righting past injustices inflicted by this office and yesterday’s policies.

- What prosecutors or prosecuting authority should investigate and prosecute these types of cases?

MCAO currently employs a division of investigators (typically police officers who retired from municipal law enforcement careers) who are certified by the Arizona Peace Officer Standards and Training (“AZPOST”) Board, and they are massively under-utilized as simple body guards or to conduct unnecessarily in-depth background checks on employees, including background “reviews” for existing employees who pre-date the more draconian background check processes implemented by the most recent elected official’s administration. This division of AZPOST certified investigators can be used to independently investigate incidents of law enforcement violence, and most of the good officers I know want the legitimacy that can only come from structurally objective, independent investigation. As I mentioned I do not support the creation of a dedicated.

Where there is a conflict or unresolvable competing jurisdiction, I would encourage the Arizona Attorney General and/or the Civil Rights Division of the Department of Justice to step in and
investigate, but I would retain my independent authority and discretion to conduct a parallel investigation and make an independent charging decision should those mechanisms fail, as they have in the past.

Yes/No

- Will you develop clear procedures and staff responsibilities for responding to officer-involved shootings, including a robust investigatory protocol and an independent investigatory team that has no regular contact with the law enforcement agency in question?

  Yes.

- Will you authorize release of body-cam recordings, dash-cam recordings, and audio or video surveillance related to police-involved shootings within 30 days of any incident?

  Yes.

- Will you commit to a full investigation of any allegation involving police corruption or illegal activity?

  Yes.

- Will you provide defense counsel with a list of law enforcement officials who are currently under investigation or who have committed misconduct in the course of their duties?

  Yes.

Conviction Integrity Policies

Law enforcement officials and county attorneys will inevitably make mistakes. The consequences of wrongful convictions are manifold: the innocent person spends years in prison for a crime they did not commit, justice continues to elude the victim’s family, and the public’s confidence in the criminal justice system is undermined. To date, there have been more than 2,000 exonerations in the United States, including only 23 in Arizona since 1989, and that only represents the cases that are known.

Short Answer
If your office were presented with newly-discovered evidence suggesting innocence, who should investigate it? What involvement should the original prosecutor, if he or she is still working at the office, have in the case?

There are few things more fundamentally un-American than allowing an innocent person to remain incarcerated. That’s why newly-discovered evidence should trigger active and robust investigation by an independent CIU, insulated not only from the original prosecutor, but from the office’s existing appellate divisions typically focused on sustaining convictions. Credible reports of newly-discovered evidence should travel a clear, unimpeded path to an independent Chief Deputy charged with supervising the CIU and reporting directly to me. We should pay particular attention to reports coming from innocence organizations, indigent defense agencies, law enforcement offices, and our own prosecutors, but the investigations should be conducted by the independent CIU. Successful CIU’s are typically administered by experienced defense attorneys, which is why I have already begun actively exploring competitive recruitments from the indigent defense and innocence organization communities.

It is critically important to involve external stakeholders, as well. This is one of the most meaningful and important ways in which I plan to involve my community review board.

The original prosecutor should be treated as a key source of information, a witness to the original prosecution, but they should have no connection or access to the investigation whatsoever. But creating a office culture of transparency and cooperation under such circumstances, particularly when we are investigating our own mistakes, makes cultural shift of paramount importance. Prosecutors, as ministers of justice, should be the least adversarial of litigants in our adversarial system. This is why I intend to merge our statewide prosecutorial and defense bar conferences, why I plan on involving the defense bar in our performance review process, why I believe prosecutorial agencies should encourage non-adversarial legal community involvement through bar leadership, inns of court, and other professional associations, and why I plan to create a formal exchange program, similar to the “Special Assistant U.S. Attorney” positions at U.S. Attorney’s Offices across the country, where a few
brave prosecutors each year can take a sabbatical to go work for an indigent defense agency, and vice versa. My intent is to restore collegiality and trust between the defense and prosecution bars, which will hopefully create an office culture where prosecutors are not afraid of cooperating with investigations into their own work, to ensure first and foremost that justice is done despite the unlimited potential of human error.

It bears mentioning that the current interim appointee to the office of Maricopa County Attorney filed a rules petition to prohibit post-conviction juror contact by defense counsel. I know from my experience working with the Arizona Justice Project that postconviction relief (“PCR”) and successful habeas litigation to exonerate innocent people often turns on investigating and discovering due process violations in the form of juror misconduct, or misconduct by others in contact with jurors. It is abhorrent that the current County Attorney cares more about mitigating her office’s administrative PCR burden than about preserving the few meaningful avenues we have for exonerating people who were wrongly convicted.

- Do you believe there are any problems created by relying on informant testimony to obtain a conviction? What are they?

Yes, building a case on informant testimony, particularly jailhouse informant testimony, is, as Justice Warren put it, like building a case on “quicksand.” As I mentioned above, this is one area that is highly susceptible to inviting Brady violations, not to mention wrongful convictions. I will minimize, if not eliminate, reliance on informant testimony, particularly jailhouse informants and paid informants.

- If there can be problems with informant testimony, under what circumstances do you believe it is appropriate to rely upon it?

Informant testimony that is not motivated by personal gain, including profit, leniency, or relief from coercive pressure inflicted by law enforcement, has the potential to be useful and appropriate, but only if a thorough investigation fails to uncover ulterior motives, we can safely disclose the identity of the informant and observe the right of confrontation as required by our constitutions, and we conduct a
subsequent investigation that yields clear, corroborative evidence of the informant’s testimony.

- What types of forensic evidence do you believe are sufficiently reliable to support a conviction? Are there any types of forensic evidence that should be excluded from a trial? What factors influence these determinations?

  Validated forensic science includes *only* those disciplines that have achieved both foundational validity and validity as applied, as determined by rigorous peer-review in the broader scientific community. Any forensic discipline whose “relevant scientific community” is presently limited to forensic practitioners and the law enforcement community fails this standard and should be excluded from trial. This includes bite mark analysis, the vast majority of arson investigation (such as heat impingement, burn mark analysis, and accelerant use), and hair strand matching. Many other traditionally accepted disciplines, such as ballistics and fingerprint analysis, have some validity, but it should never be overstated.

  I will support the creation of a state-wide forensic sciences task force, like the Obama-era National Commission on Forensic Sciences decommissioned by the current administration in 2017.

- Will you take steps to ensure your line prosecutors disclose information that is helpful to the defense? If so, what will you do specifically? How will the scope of disclosure be defined?

  Yes. I plan on implementing a broader, more comprehensible rule than *Brady*, like to the civil standard for disclosure of *things that might lead to the discovery of relevant evidence*. I also plan on implementing comprehensive, mandatory attorney training in third-party entity and client-agency investigation techniques to teach my prosecutors how to affirmatively investigate and marshal all available evidence physically in the possession of law enforcement but constructively in their possession. I will also seriously minimize, if not eliminate, the practice of building cases on the informants, particularly jailhouse informants and career, paid informants, because of the potential such tactics have for creating disclosure conflicts.
Yes/No
- Will you establish and fully staff a Conviction Integrity Unit (CIU) that examines post-conviction cases to identify and correct wrongful prosecutions?

  Yes.

- Will the CIU remain separate from the office’s appellate division and trial prosecution teams, to ensure that people who are considering undoing a conviction are kept separate from those who traditionally seek to obtain or uphold one?

  Yes.

- Will you prohibit staff from relying on discredited scientific techniques, such as bitemark analysis, burn patterns, and hair strand matching?

  Yes.

- Will you conduct regular *Brady* trainings, require assistant state attorneys to turn over all evidence that arguably falls within the *Brady* rule, and discipline assistant county attorneys who fail to comply with their *Brady* obligations?

  Yes.

#5: ADDRESSING ADDICTION

*Years of experience with ineffective drug laws and the latest medical research on addiction suggest that treating problematic drug use as a public health issue, as opposed to a criminal justice issue, is a more effective approach to reducing harm. County attorneys should adopt policies or engage in actions to reduce the number of people in jails and prisons for drug-related offenses.*

Short Answer
- Do you think the criminal justice system is the appropriate place to address substance use disorders?

  No. *Addiction is a public health issue, not a criminal issue, and it should be treated as such.*

- Do you believe prosecuting addicted persons increases or decreases their likelihood of recovery? Why?
Substance use disorders are complicated, but their underlying causes are often compounded by the shame and stigmatization of involvement in the justice system. Moreover, the incapacitation that follows a conviction, even with a non-carceral sentence, diminishes opportunity and community interaction, which makes for fertile ground in which addiction can grow and thrive.

- Do you think the “war on drugs” has been effective? Why or why not? If yes, in what ways?

No. I have deep, personal familiarity with the collateral consequences of the war on drugs. My biological father worked for the cartels in Colombia, where I was born. My early childhood years were punctuated by flights from cartel violence, immersion and assimilation in the United States in hiding, and, later, the loss of my biological father to the carceral state. Foreign sovereigns and organizations that produce and distribute drugs are empowered, not deterred, by the black market the war on drugs has created, couriers are recruited from such vulnerable communities that there is no deterrent value in draconian sentencing laws, and heightened stigmatization promotes increasingly risky behavior among users, contributing to addiction and death rates.

- What do you believe is the most effective way, if any, for county attorneys to address drug-related offenses?

The county attorney should study and report on the long-term impact and efficacy of our drug-related offense policies and advise our county agencies and our board of supervisors about possible alternatives to help reduce stigmatization and invite those suffering from addiction to come out of hiding and avail themselves of accessible, non-criminal treatment services programs.

Only when substance use disorders and addiction lead individuals to engage in behavior that is harmful and dangerous to the community at large, robbery or burglary committed to support an addiction, should the county attorney deploy criminal scrutiny. But even at that point, the focus should be on addressing the root cause of the harm and preparing the offender for rehabilitation and rejoining our society and economy.
• What punishment, if any, is appropriate for offenses involving the possession or purchase of drugs? What type of resolution would you most prefer?

I do not believe we should be prosecuting simple drug possession. I would prefer a resolution where first responders bring those suffering from addiction to safe injection sites adjacent to accessible recovery treatment services programs and adequate medical care.

• If treatment is offered in lieu of incarceration, should failed efforts at recovery or relapse trigger incarcerative sentences in the future?

No, and this is why non-stigmatized, non-criminal addiction services are so desperately needed. Diversion programs inevitably require success by some measurable metric. Failure means that charges are reinstated. Reinstated charges means records, probation, and even prison. If we want to stop sending people to prison because of a public health issue, we shouldn’t be offering treatment “in lieu of” incarceration. We should just be offering treatment.

• Do you believe seeking an incarcerative sentence is an appropriate response to drug sales? Why or why not?

No, ordinarily not. Drug sales are, by and large, crimes motivated by poverty and unequal opportunity. The typical drug dealer (and every single one I’ve ever encountered through my work) would much prefer a stable job for a living wage.

• Arizona law ties severity of charge to the amount of controlled substances involved in an offense. Do you believe the quantity of drugs involved or seized is an appropriate proxy for a person’s danger to the community or role in a drug organization or distribution network?

No. The people who present the most danger to the community within those organizations are rarely nearby any significant quantities of drugs. Low-level drug mules and street-level salesmen are the ones who typically get arrested in connection to large quantities of controlled substances.
• Do you believe that evidence of a minor or insignificant role (such as a courier or mule) should be considered in determining whether to pursue increased charges based on the quantity of controlled substances recovered?

  Yes. Minor role is a clearly defined mitigating circumstance in federal courts, and the people who end up in these positions are typically very disadvantaged individuals with little or no options who turned to extremely high-risk, low reward work just to make a meager living. This is a relevant consideration, one that militates against pursuing increased charges based on the quantity.

Yes/No
  • Will you presumptively decline to prosecute marijuana-related offenses?

  Yes.

  • Will you proactively vacate and expunge past marijuana convictions?

  Yes, I would love to. Unfortunately, Arizona does not have a mechanism for vacating past marijuana convictions at this time. I am working with our legislature to ensure we have this ability under my administration.

  • Will you publicly support legislation to legalize marijuana?

  Yes.

  • Where dismissal is not possible, will you expand cite-and-release and diversion programs for drug offenses, including drug possession, possession of drug paraphernalia, and distribution of drugs?

  Yes.

  • Will you refrain from charging defendants with possession with intent to distribute a controlled substance based solely on drug quantity or packaging?

  Yes.

  • Will you primarily seek non-incarcerative sentences for defendants charged with simple possession, possession with intent to distribute, and street-level sale?
Yes.

Responses to the Opioid Crisis
The opioid crisis claims tens of thousands of lives every year and has shown few signs of abating. County attorneys can play an important role in limiting the harm caused by this epidemic.

Short Answer
- Do you believe sellers of opioids should be treated differently or more harshly than sellers of other types of controlled substances? Why or why not?

  No. Opioids are just the demon drug *du jour*, like crack cocaine and methamphetamine before. The demonization of opioids in response to the growing epidemic is throwing more gasoline on the fire by chilling prescriptions that are supervised by medical personnel and which many need for pain management. Very few people die of opioid overdose when their prescriptions are managed by medical personnel, but plenty die from riskier illicit substance use behavior once their providers are frightened away from prescribing opioids for pain.

  Because of the potential danger of opioids, especially fentanyl, are there circumstances in which you believe that users of opioids should be incarcerated for their own protection?

    No, not incarcerated. Opioid withdrawal is one of the most painful and potentially lethal forms of addiction withdrawal, and our jails and prisons are notorious for their poor medical care. In fact, the Ninth Circuit just published its opinion in *Parsons v. Ryan*, which affirmed a contempt order against the Arizona Department of Corrections for failing to improve its healthcare systems as stipulated in the parties’ settlement.

- Do you believe that opioid addiction is more difficult to overcome, and therefore requires more aggressive treatment interventions, than other forms of addiction?

    I do not believe opioid addiction is more difficult to recover from than most other forms of addiction. I believe opioid addiction and recovery implicates some very serious medical concerns, more than some other forms of addiction, and those concerns could occasionally require aggressive treatment interventions.
Yes/No

- Will you adopt a policy stating that drug overdoses will not be prosecuted as homicides, except when there is sufficient evidence that the person purposefully caused the other’s death?

  Yes.

- Will you publicly support the creation of supervised injection sites?

  Yes, although I think we need to rebrand what we call them here in Arizona in order to be successful.

- Will you adopt a Good Samaritan policy stating that individuals who call emergency services in response to an overdose or to seek treatment for addiction will not be prosecuted?

  Yes.

- Will you decline to file drug possession charges against any person who is found with controlled substances because he or she sought help for an overdose or addiction from a law enforcement officer or treatment provider?

  Yes.

#6: PUNISHMENT AND PUBLIC SAFETY

When is punishment productive or necessary?

Research reveals that, for minor offenses, prosecution and punishment decreases rather than increases public safety. Even misdemeanor convictions, short jail terms, or brief probationary sentences can weaken social ties, cause job or housing losses, and interfere with prosocial activities, which are critical to preventing recidivism. These effects, therefore, actually increase the likelihood that the individual will commit future offenses.

Short Answer

- How should a county attorney respond to evidence showing that prosecuting and punishing individuals for minor offenses does not reduce offending among the public and actually increases, rather than decreases, the likelihood of reoffending among those prosecuted?
Public safety and welfare is the primary responsibility of the county attorney, so they should exercise discretion to stop prosecuting said minor offenses under such circumstances.

- Criminal justice policy is often driven by the moral commitment to punishment, rather than evidence of its efficacy. Do you believe prosecutors should adopt evidence-based practices? What if those practices diverge dramatically from a policy grounded in just-desserts or retribution?

Yes, evidence-based practices are a key component of real justice reform. When those policies diverge dramatically from retributive, morally compelled historical practices, it is the job of the county attorney to educate the public, defend the change in policy made in the best interests of the public, and accept the consequences of that obligation no matter what they might be.

- How would you respond to research demonstrating that existing punitive policies, in spite of their public appeal, are actually decreasing rather than increasing public safety?

The way I am responding right now, by running on an aggressive decarceral reform platform and educating the electorate about the many ways in which the “tough on crime,” us vs. them approach has made us less safe.

- What role should the moral commitment to punishment play in deciding which offenses to prosecute and what sentences to seek? Is it different for different types of offenses?

None. Morality is not a consistent, definite, or universally shared concept, and it invites intermingling of religious beliefs and criminal justice policy. This is how my elected predecessor came to spend $70,000 on an Islamophobic trainer to come train his investigators, and it’s why we have criminal abortion statutes all over the books across this country, including in Arizona. We need to stop weaponizing our justice system to solve our societal disagreements. The concern should be on harm reduction and prevention through evidence-based practices, not gut feelings.

- Do you believe the county attorney has an obligation or duty to prosecute offenses and offer probationary plea agreements whenever crime victims have
suffered monetary losses supporting a restitution order? Are there any other adequate means through which that money could be collected?

No, the obligation is to improving public safety through harm reduction and prevention. We have a statutory scheme for something called a “misdemeanor compromise” in Arizona. See A.R.S. § 13-3981. There’s at least some precedent, then, that our legislature agrees, sometimes, if it’s in the best interests of the victim, the community, and the accused, and there are adequate means for the money to be collected for the injured victim, that prosecution is not obligatory.

Yes/No
- Will you presumptively decline to prosecute low-level misdemeanors, where evidence shows prosecution actually decreases, rather than increases, public safety?

Yes.

- Will the existence of monetary losses conclusively determine whether an offense is prosecuted or whether a certain penalty is sought?

No.

- Will you presumptively decline to prosecute prostitution-related offenses and publicly support the decriminalization of sex work?

Yes.

- Where declination is not possible or appropriate, will you establish and offer expansive pre-charge or pre-plea diversion programs for misdemeanor offenses?

Yes.

Restraint in Charging and Fair Plea Bargaining
County attorneys have nearly unchecked authority to set priorities and choose the criminal charges they file, with enormous leverage over guilty pleas and the final disposition of cases.

Short Answer
• By law, county attorneys are permitted to file charges when there is probable cause to believe an individual has committed a crime. Do you believe this is the proper standard for filing? If not, what standard would you have your office utilize instead (i.e., evidence to support proof beyond a reasonable doubt)?

   I am not a fan of charging someone on probable cause alone, nor am I a big fan of the “reasonable likelihood of conviction” standard. I would like to raise the standard to admissible evidence sufficient to support a conviction beyond a reasonable doubt, but I would also implement a secondary “interests of justice” standard to divert cases out of superior court before charges are filed and clean records are marred.

   This would be an excellent place to implement an early intervention program to screen cases for diversion, but it is also an excellent place for prosecutors to consider the alleged harm against all of the collateral costs on the community, including the taxpayer cost of incarceration under various possible outcomes, and remove cases from superior court that simply do not warrant felony scrutiny, like poverty-based offenses and simple drug possession cases.

• In filing charges, in what light should county attorneys view evidence? In the light most favorable to the State? The defense? Another standard? How would the choice affect charging outcomes?

   This is an excellent question. I like the concept of training prosecutors to view the evidence in the light most favorable to the defendant. This is one of the collateral benefits of encouraging broader collegiality and office-wide training and experience from both tables, which is an important part of my plan to bring about effective cultural change. This perspective would help streamline charges and prosecutions to only the most viable and substantiated allegations, as opposed to the “see what sticks” approach too often employed in Maricopa County today. It is my understanding, anecdotally, that is actually how charging decisions used to work, at least before the tough-on-crime era.

• Should a county attorney ever consider filing lesser charges than the evidence clearly supports because of circumstances unique to a particular defendant, such
as mitigating information, lack of prior or recent criminal history, etc.? Why or why not?

Yes. When we engage in a restorative, harm vs. just result calculus, it is very likely that our assessments of what the just result should be will be in conflict with Arizona’s mandatory minimum sentences. For example, a first-time offender steals some jewelry in a crime of opportunity because he can’t afford mounting medical bills. It just so happens, the jewelry was valued at over $100,000. This would be a mandatory prison offense under Arizona law if charged as simple theft and the value were alleged, and that would not be a just result. I discussed other personal circumstances above that similarly might warrant charging differently or less than that supported by the evidence.

Finally, my “staff up” approach is designed to help the office culture depart from Maricopa County’s historic practices of charging every possible offense, alleging every possible enhancement, and yesterday’s “plead to the lead” standard. One component of it is that, absent some compelling justification, when conduct falls under multiple different codified offenses, we assume the legislature gave us that discretion so we would only file the more serious offense when absolutely necessary. For example, every single instance of Fraud Schemes and Practices, a class five felony under A.R.S. § 13-2311, would also satisfy the elements of Fraud Schemes and Artifices, a class two felony under A.R.S. § 13-2310. Our standard practice will be to charge the lesser offense in circumstances where the conduct falls under multiple statutes, absent really compelling justifications identified after “staffing up.”

Would you consider declining to file or pursue charges where particular law enforcement practices (like equipment stops, for example) or arrests lead to significant racial disparities? Why or why not?

Yes. As an elected official I will be required to swear an oath to uphold our state and federal constitutions. It is well settled that selective enforcement of crime is an unconstitutional violation of due process and equal protection under the law. It is also well settled that facially neutral government action can still violate equal protection when it has a disparate impact on one or more racial or ethnic groups over others. I see it as a function of my oath of office to exercise
discretion where required to remedy instances of disparate racial and ethnic treatment under law enforcement practices.

Yes/No

- Will you commit to only charging offenses where they are clearly supported by sufficient evidence to prove the defendant’s guilt beyond a reasonable doubt on each charge?

  Yes.

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

  Yes, categorically. This is unethical, discipline-worthy prosecutorial practice.

- Will you commit to never conditioning plea offers on the pursuit of pretrial motions to suppress premised on potential constitutional violations?

  Yes.

- Will you limit the impact of the “trial tax” to the extent possible by only pegging a sentence to what is appropriate to protect public safety, and not to a sentence intended to punish a person for going to trial?

  Yes.

- Will you commit to considering mitigating circumstances in each case and filing reduced charges when appropriate?

  Yes.

**Lengthy Prison Sentences**

Research reveals that extremely lengthy prison sentences do not promote public safety. They do nothing to deter criminal conduct; even for those who have committed acts of violence, they often incapacitate people for much longer than necessary to prevent future danger, and they break down familial ties and other social bonds that hinder an individual’s ability to rebuild his or her life once released.

**Short Answer**
What factors should a prosecutor consider in determining an appropriate sentence in a given case?

As an attorney, the prosecutor’s primary ethical obligation is to their client, the people of their community. Determining appropriate sentences in the best interests of the client can be difficult given all the competing interests in the client-community. Prosecutors, as ministers of justice, should start with justice, the impartial administration of what is fair and reasonable. Through that lens, prosecutors must consider the following:

1. **The Individual**: consider and weigh the individual’s personal background, including their age, race, ethnicity, education level, health, employment and employability, family circumstances, community relationships, and the individual’s history with the justice system (not just as an aggravator, but also as a possible explanation for incapacitation and impact on the individual’s perceptions of and relationship with government and authority).
   a. **Underlying Causes and Contributors**: This is not just about comprehending motive, but impetus. If someone is a habitual, repetitive offender, we are doing the client, our community, a disservice by not taking the time to understand and remedy, as best we can, the underlying causes and contributors of the behavior.
   b. **Barriers to Rehabilitation**: Comprehending the underlying causes helps us anticipate hurdles and tailor just results to prepare for them.

2. **Harm Caused by the Offense**: the nature and severity of the harm are factors, but *not* because more serious harm necessarily means more serious punishment is required. We need to comprehend the harm to determine where and how to allocate resources to redress the harm whenever possible.
   a. **Additional Harm**: The justice system takes a toll on the victim, the defendant, their families, and their communities. I know this from personal experience. These collateral harms are critically important parts of the calculus, because they create loss,
disadvantage, anger, and resentment, which can themselves later become underlying causes of harmful conduct by others in the future.

3. **Best Interests of the Victim**: This isn’t always the same thing as the wishes of the victim. Victims are dis served by prosecutors whose relationship with them is limited to the promise of a lengthy sentence, and then never seeing them again. When educated about the full range of potential outcomes, including restorative and transformative justice options, shortcomings and failures of prison as a deterrent or a rehabilitative model, the lack of deterrence, etc., the vast majority of crime victims, even violent crime victims, will choose the option that makes them safest over the option that gives them a sense of vengeance or retribution.

4. **Best Interests of the Community**: Similarly, the community can and will experience anxiety, and high profile, particularly offensive crimes will result in public outcries for retribution and punishment. The prosecutor needs to consider the public’s sentiment, but also have the courage to what is in the community’s best interests, particularly when the community is reacting based on emotion, anger, and fear. The costs of punishment on the community are of paramount concern; the financial cost of the sentence, the opportunity cost by incapacitating community members from participating in society and the economy, the social costs on our intra-community relationships, the costs on increased otherization, crime, poverty, substance use, and recidivism, and more.
   a. **Equity**: Prosecutors must consider community perceptions and relationships, particularly as juxtaposed against historic and persisting racial and social injustices.

5. **Substantive Law**: The legislature’s guidance on the substantive law and what the people’s representatives have chosen to identify as aggravators and mitigators, for purposes of assisting the prosecutor in evaluating harm and just results.

6. **Procedural Fairness**: Whether and how the way in which a prosecutor metes out justice in a particular case will be
perceived of, by the defendant and the community, as fair
or just.

- What role should retribution play in determining the length of incarcerative sentences? Is it different for different types of offenses?

  Retribution has little or no role in determining the length of an incarcerative sentence. Only when the public trust is so violated and the balance between law and order are in jeopardy should retribution play a role, typically in offenses for violating public trust or for crimes committed by individuals in positions of public trust. At the end of the day, though, the public should not drive the sentence length, and any increases in the length made to redress breaches of public trust should be balanced against all other equitable concerns, without creating more harm and fracturing relationships further.

- Do you believe the sentences imposed in Maricopa County currently are too long, too short, or fair? Is it different for different types of offenses? Or certain people?

  They are far too long. The numbers are pretty well known and hard to deny; Maricopa County hands out the longest sentences in the state, this is the fourth or fifth (depending on whose numbers you’re using) most incarcerated state in the most incarcerated country in the world, and our prison sentences are disproportionately borne by the Black, Latinx and Native communities (for whom the average sentences are even longer).

- If you believe that the sentences currently sought should be either shortened or lengthened, how would you implement those changes once in office?

  On average, I would like to reduce the length of prison sentences by at least half. We will not allege historically unjust convictions, like simple drug possession or minor property offenses (e.g., shoplifting) as priors to avoid triggering heightened sentencing categories and mandatory minimums, and under my “staff up” system we will require meaningful justifications for filing any additional sentencing enhancement allegations, like historical prior convictions or “on release” allegations. Just because we can doesn’t mean we should.
That said, cultural change is the number one way we will reduce prison sentences. We need to empower line attorneys to do justice by repairing their relationships with the defense bar and the community, building some professional distance between them and law enforcement, facilitating broader perspective through administrative requirements, like regularly visiting jails and prisons or volunteering pro bono hours or charity, and rethinking our reward structures to encourage prosecutors to give people chances without fear of repercussions.

Yes/No

- Will you commit to not seeking incarcerative sentences longer than 15 years, unless there is clear evidence that public safety, rather than retributive concerns, requires it?

  
  Yes.

- Do you commit to reviewing sentencing data, determining what offenses and practices are disproportionately driving incarceration, and then implementing plea guidelines in your office to address areas of concern?

  
  Yes.

- Will you publicly oppose any proposed legislation that would create new mandatory minimum sentences, lengthen existing minimum sentences, or restrict parole eligibility and support legislation aiming to reduce minimum sentences and increase opportunities for parole?

  
  Yes.

Mass Probation

Probation is a significant contributor to mass incarceration. Though it was originally intended to serve as an alternative to incarceration to help people stay in their communities while they engaged in rehabilitative interventions, it has transformed into a system geared towards surveillance. Probation has also skyrocketed since 1980: more people are being supervised, and they are being supervised for longer periods of time. Prison admissions because of probation violations have similarly ballooned.

Short Answer

- In your opinion, what should the purpose of probation be?
Probation is about reintegration, getting to the bottom of what caused an individual to come into contact with the justice system and then providing them with the tools and resources they need to overcome that obstacle.

- Do you believe the surveillance function of probation is important (i.e., requirements regarding reporting, curfews, consuming alcohol, obtaining permission to move or travel, limits on who probationers may associate with, etc.)? Why or why not?

The surveillance function of probation is only important insofar as it can help an individual eliminate risk factors while taking advantage of services. For example, addiction and recovery are made exponentially more difficult if an individual does not eliminate temptations from relationships and circumstances the individual associates with the substance. But the purpose of probation is to set people up to succeed on their own, so eventually the surveillance function becomes more of an interference in someone’s liberty, freedom of movement and association, and can actually become a significant obstacle to success.

- Is probation a form of “second chance” that a person should be penalized for squandering or wasting?

No. Probation is punishment. Probation means a conviction, curtailing liberty, damaging relationships, families, and reputations, and traumatic invasions of privacy. Probation already puts people in a very difficult position for the rest of their life. We should not be revoking probation and compounding that punishment because someone, who was likely struggling before they were on probation, continues to struggle a bit while on probation.

- How should courts address technical (non-criminal) violations of probation?

First, we need to determine how or why the individual had a technical violation in the first place and then determine if we can help address the underlying cause. For example, transportation problems routinely lead to failed drug tests, failed drug tests cause fear and anxiety which can encourage people to cancel meetings, etc., etc. Meaningful public transportation assistance could solve these hypothetical technical violations.
I am a fan of alternative sanctions like the kind typically associated with therapeutic courts. Individually tailored community service and concrete personal development or self-improvement goals as sanctions are less stigmatizing and help set struggling individuals on a more successful path.

- Do technical violations demonstrate that a person is incapable or unwilling to rehabilitate?

  No, technical violations almost categorically indicate a need for additional or alternative support systems and services.

- Under what circumstances should a term of probation be revoked and an incarcerative sentence imposed?

  Probation should be revoked when a probationer commits a new, serious offense that warrants prison as a sanction on its own.

- Is it ever appropriate to hold in jail someone who has been accused of a violation or is otherwise on a probation detainer? If so, when and why? If not, what changes would you advocate?

  Jailing active probationers is incredibly disruptive and most often counterproductive to the purposes and goals of probation. Maricopa’s therapeutic probation courts have had some success with using very limited jail sentences as sanctions (the most extreme sanctions) to encourage program participation, but if the court finds itself using more than a day or two of jail as a sanction for the same individual with any degree of regularity, then it is probably time to acknowledge that this individual likely will not be successful in a therapeutic probation setting and we should look for alternative dispositions to achieve a just result.

Yes/No

- Will you commit to only seeking probation where it serves a rehabilitative goal focused on a specific need of the individual?

  Yes.
● Will you request and offer limited probation conditions in each case and seek only conditions that relate directly to the rehabilitative goal of the supervision?

Yes.

● Will you establish a policy limiting the length of most probation terms to 6 months for misdemeanors and 1 year for felonies?

Yes.

● Will you liberally offer early termination at sentencing, and support probationer requests for discretionary early termination, when the rehabilitative goal of probation has been fulfilled?

Yes.

● Will you employ alternative sanctions for technical violations of probation, such as community service hours, additional treatment interventions, or temporary curfews, instead of seeking imprisonment time?

Yes.

● Will you commit to seeking probation revocation only when the individual has committed a new felony offense or has continuously and willfully evaded supervision?

Yes.

● Will you publicly support legislation to limit incarcerative responses to technical violations of probation?

Yes.

#7: IMMIGRATION CONSIDERATIONS

Over the last few years, federal enforcement of immigration law has become increasingly strict. ICE policies not only allow for deportation because of minor allegations like possession of drugs, but they also can undermine community safety by discouraging immigrant victims from going to court or speaking to law enforcement.
Short Answer

- What, if any, is a county attorney’s role in the enforcement of federal immigration laws?

  None. If SB 1070, and the history leading up to it, taught us anything, it is that we should never entrust local elected officials, particularly those involved in law enforcement and prosecution, with enforcement of federal immigration laws. As a Latino immigrant, this is a core belief and significant factor that informed and motivated my candidacy in the first place.

- Should county attorneys consider collateral immigration consequences in charging decisions and plea offers? What effect should those considerations have?

  ABSOLUTELY! Our County Attorney currently refuses to consider immigration consequences. So much as a mention of collateral consequences can sometimes foreclose negotiation and force a case toward trial. This practice arose under the auspices of fairness and equality, but in practice, it is so fundamentally unfair that it has created massive inequity.

  I saw this time and time again doing complex indigent fraud defense work in a specialty division of our public defender's office. Imagine a case where an administrative office employee embezzles five figures from a business. This is a serious offense, but even our current county attorney would handle this with some kind of non-carceral, supervision-focused settlement so the offender could continue working and eventually make the victim whole. If the offender is an immigrant, though, then the charges and the most likely settlement offer would lead to deportation. The offender never actually serves their sentence, the victim is never made whole, and quite frequently, families are decimated. American children are faced with the Hobson’s choice of following parents to countries they may never have known or else ending up in our broken foster care system, where who knows what additional trauma and disadvantage they might experience, while the rest of us bear the tax burden for it.

  When we engage in a restorative justice analysis of a given offense, a harm-based approach that asks what result is in the best interests of the entire community, the inequities inherent to
remaining willfully blind of immigration consequences become apparent, but so does the solution. We can charge different offenses (if we have to charge at all), offenses that do not constitute CIMTs or Aggravated Felonies. We can offer more flexible settlement options (including diversion). The end result will be that the similarly situated citizen offender will have approximately the same experience and outcome with the justice system as the immigrant might expect, which is the only fair, just result.

Yes/No
- Will you publicly support local ordinances and statewide legislation that affirmatively limits law enforcement’s cooperation with ICE, and oppose any effort to enlist local law enforcement as federal immigration agents?

  Yes.

- Will you implement a policy requiring county attorneys to consider immigration consequences in charging, plea, and sentencing decisions?

  Yes.

- Will you expand pre-plea diversion programs that allow individuals to obtain dismissals of their charges without entering an admission or statement of guilt?

  Yes.

- Will you affirmatively support post-conviction litigation from non-citizens who pleaded guilty without being advised of the potential immigration consequences of their pleas?

  Yes.