



Criminal Justice Reform District Attorney Questionnaire

District Attorney Name: Matthew Fogal

Questions are in italics.

DA responses are bolded.

Cash Bail

About 60 percent of county inmates in Pennsylvania are held pretrial^[1]. A large portion of those people jailed pretrial are incarcerated because they can't afford cash bail^[2]. Does your office routinely request monetary conditions of bail? In which percentage of cases does your office request cash bail?

What factors determine whether your office will ask for a monetary bail versus a nonmonetary bail?

Are risk assessment tools used in your county to make bail recommendations?

Prosecutors from our office are not present when someone is arraigned (when bail is set) after arrest. I have previously advised our Magisterial District Judges (“MDJ”s) what our standing recommendation (based on a wide variety of factors) would be if we were present at the time bail is set. Many cases are initiated with a summons instead of an immediate arrest and arraignment. In those instances, all arraignments take place at our Central Court. Most of the cases result in ROR or

some unsecured bail, but in some cases where appropriate we may ask for monetary bail.

In PA, bail determinations are governed by rule (Rule 523, Pennsylvania Rules of Criminal Procedure), and MDJs or Common Pleas judges are required to consider enumerated “Release Criteria.” The primary factors (from Rule 523) which I consider when recommending monetary bail are: (1) the nature of the offense charged and any mitigating or aggravating factors that may bear upon the likelihood of conviction and possible penalty; (2) the defendant’s age, character, reputation, mental condition, and whether addicted to alcohol or drugs; and (3) the defendant’s prior criminal record.

Risk Assessments are used in Franklin County in a number of circumstances within the criminal justice process (eligibility for Good Wolf Treatment Court, and generally used by our jail and Adult Probation Department), but not formally used when bail is determined. Law Enforcement Officers are required by our MDJs to complete a worksheet related to the “Release Criteria” when a suspect is arrested and arraigned in person before an MDJ.

Prosecutorial Transparency

It is important for prosecutors, as elected officials, to be transparent in their policies and practices. What kind of data does your office currently collect and make public?

Would you agree to make all policies of the district attorney publicly available on your office’s website, including those regarding charging and plea-bargaining decisions? Would you further agree to post quarterly data regarding all critical decisions made by the district attorney’s office, encompassing charging, pretrial recommendations, plea bargains and sentencing recommendations, including demographic information?

Does your office have an open-file discovery policy; does your office allow the defense full access to the prosecutor’s file both pretrial and after conviction?

The only data that is routinely collected is related to Drug Task Force investigations, data related to numbers of overall cases filed, fatal overdose and use of Naloxone, and data related to Get Back Up. The Drug Task Force data is sensitive and provided to municipalities on an annual basis. Our caseload data is part of our budget, submitted annually. The data related to overdoses, Naloxone use and Get Back Up is shared with our Overdose Task Force, which is open to the public and of which I am the Chair. That data is regularly shared on several different platforms (webpage, public speaking, Stakeholder Meetings, handouts, press releases/press conferences).

With respect to polices within the office, there are no specific policies with respect to charging or plea negotiation, pretrial recommendations or sentencing recommendations. Cases are prosecuted individually and the results in each case are available generally through public filings and statements made in court. The only such written guidance exists with respect to Early Accountability, where early pleas result in more favorable dispositions for Defendants and where more Electronic Monitoring and SCRAM are used extensively. When Early Accountability began, local media covered it and it was explained when I was interviewed. Similarly, Good Wolf Treatment Court, Get Back Up and the Mental Health Co-Responder initiatives have been discussed publically with local media and via written press release, so the public is aware of these initiatives.

With respect to discovery, we do not have an “open file” inasmuch as we do not physically hand our files to defense counsel, but they are obviously provided with discovery. In fact, through Early Accountability, we provide discovery much more quickly than required and I believe much earlier than any other jurisdiction.

Mandatory Minimums

In 2015, the Pennsylvania Supreme Court found most of Pennsylvania’s mandatory minimum sentencing laws unconstitutional. There is a bill in the General Assembly that would reinstate the mandatory minimums invalidated by the court in 2015. Do you support bringing back those mandatory minimum sentencing laws? Why or why not?

I generally support mandatory minimums for the specific offenses at issue, as they reflect appropriate sentences for those offenses/circumstances, and result in both general and specific deterrence.

Police Accountability

Some prosecutors keep a list of current and former police officers who have been determined to have a history of lying, racial bias, or brutality. Would you be willing to publicly produce a list of police officers for whom the District Attorney’s Office (DAO) has evidence of dishonesty, excessive force, or racial bias?

What does your office do when you receive information that a police officer has engaged in criminal activity such as perjury, assault, or other unlawful conduct?

No such list has been compiled or maintained.

In the circumstance where there is an allegation of criminal conduct, the investigations are often referred to the Attorney General’s Office, in order to avoid

the appearance of impartiality. However, I do personally review Use of Deadly Force investigations and generally issue a press release with my determination.

Probation Detainers

Does your office engage in the practice of asking judges to lodge a detainer against defendants for technical violations of probation?

Does your office request that detainers be lodged against defendants for direct violations of probation as a result of new charges?

In Franklin County, probation officers generally initiate violation proceedings independent of the DA's Office, but prosecutors then later litigate the proceedings when they are listed for court.

When there are new criminal charges filed against someone on probation supervision, law enforcement officers generally advise the supervising probation officer of the new offense.

Reentry

What, if anything, can your office do, or is your office currently doing, to help those who are in reentry?

Do you think DAs around the state should play a role in assisting people who have served their time successfully reintegrate into society when they come home?

Outside of the tremendous amount of time worked in the area of addiction/treatment/recovery, the DA's Office does not play a major role in reentry initiatives in Franklin County. The primary focus of the DA's office, with respect to a suspect/Defendant's overall role and relationship to the community as a whole, is prior to charge as appropriate, or on the "front end" rather than "back end" and with an overall view towards a healthy community and crime prevention rather than crime reaction.

The greater priority of law enforcement and the DA's Office should be on crime prevention rather than crime reaction. The chief focus is not assisting or consulting all manner of social services and other agencies that may assist a Defendant paroled from jail/prison, but rather those agencies and services that may keep someone from committing acts or more acts that get them sent to jail/prison. Within that worldview, our "non-entry"/diversion focus concentrates on drug/alcohol treatment and recovery, and behavioral health services.

Diversions Programs

What kinds of diversionary programs are available in your county? Would you consider expanding these?

Do people using these programs have to pay to participate? If so, what is the amount?

Get Back Up is a DA-driven diversion initiative aimed at getting necessary drug treatment to offenders or those that ask for help. Below is the philosophy of Get Back Up, and more information will be separately attached: --- Criminal law is simply a social compact or bilateral agreement. We are all signatories to the compact, agreeing that we will not commit acts against each other or engage in risky behavior that could threaten others. We agree to refrain from that conduct, and in exchange, everyone else agrees not to do harm or threaten us. Criminal law is really that simple; it protects all of us and binds all of us. There is no “us” or “them” as part of the compact. We are all “us.”

Generally, when we think of victims, we think of someone who was directly impacted by a crime. We think of a victim as someone who was physically assaulted, had something stolen from them, was threatened or put in danger. Citizens become officially referred to as victims when a crime is reported. And for those whose career is in law enforcement, whether as police or prosecutors, the primary motivator every day is the opportunity to help victims.

But we also serve our greater communities generally, and not everyone who suffers from crime is technically a victim. For example, at this point, many in our county have dealt with addiction within their family, or know someone who has. Indeed, one in four families across this country is impacted. Those families dealing with addiction are also suffering, whether they have the official moniker of “victim” or not. And make no mistake, many have in fact been victimized but decided not to report the crime. The individual’s behavior is often all-consuming for the family and their other extended family members and friends, and their unpredictable and risky behavior adds an incredible amount of heartache and worry and stress to all within that circle. Law enforcement cares about them as well, and certainly shares most everyone’s frustration with the endless cycle of the disease of addiction and its symptom of criminal behavior.

Not to be overlooked is the user, or addict. While not all addicts commit crimes, some do. In fact, one addicted offender may commit 2-3 crimes per day, 3-4 days per week. Such an individual is difficult for many of us to go so far as to classify as a “victim” of addiction as well, but our society better understands this disease today than it did years ago. Now, many of us know that opiate addiction is less about feeling “good” or “high” than it is about the desperation of not wanting to feel awful or physically ill. These days, people suffering with addiction and are dying at record rates across the country, leaving an unfortunate legacy of unrealized potential and leaving their families to suffer yet more heartache. Too often, the historic treatment options available have essentially been band-aids because they do not allow for long enough periods of treatment. Research indicates that having the person engaged in treatment services for 90 days enhances long-term recovery and

reduces relapse and recidivism.

Law enforcement cares. No one has the market cornered on compassion, and law enforcement cares as much, if not more, than anybody. Police officers take an oath to protect and serve, and they know that each day could be their last. They would lay down their lives for their fellow citizens, and there is no greater love than that. We in law enforcement recognize that every single life is precious and a gift, and that we must do all we can to help victims who are suffering. The individuals who have fallen prey to the disease of addiction are our sons, daughters, husbands, wives, parents, and friends. They matter. This is not about “us” and “them.” In this great country and in this community, it must always be viewed as “us.” While much must be done in order to combat addiction and the scourge illegal drugs bring to our front doors, our current efforts move us yet closer to understanding the grayness of the line between addiction and crime. Consider the following parable:

Once upon a time there was a small village on the edge of a river. The people there were good and life in the village was good. One day a villager noticed a baby floating down the river. The villager quickly swam out to save the baby from drowning. The next day this same villager noticed two babies in the river. He called for help, and both babies were rescued from the swift waters. And the following day four babies were seen caught in the turbulent current. And then eight, then more, and still more!

The villagers organized themselves quickly, setting up watchtowers and training teams of swimmers who could resist the swift waters and rescue babies. Rescue squads were soon working 24 hours a day. And each day the number of helpless babies floating down the river increased. The villagers organized themselves efficiently. The rescue squads were now snatching many children each day. While not all the babies, now very numerous, could be saved, the villagers felt they were doing well to save as many as they could each day. Indeed, the village priest blessed them in their good work. And life in the village continued on that basis.

As everyone else was busy in the rescue efforts to save the babies, one of the townspeople started to run away along the shore of the river.

"Where are you going?" shouted one of the rescuers. "We need you here to help us save these babies!" "I am going upstream to stop whoever is throwing them in!"

Franklin County Law Enforcement is heading upstream. The root cause of the overwhelming majority of criminal behavior is addiction. And with this effort of “Get.Back.Up.,” we are heading upstream to keep the babies out of the water. --- The District Attorney’s Office also supports the Law Enforcement/Mental Health Co-Responder initiative, which is aimed at determining non-criminal outcomes for those who have broken the law but who have mental health issues. When applicable, law enforcement officers and a Mental Health caseworker respond to suspects with mental health issues, and make efforts to obtain appropriate treatment and services in lieu of arrest/criminal charges. No diversionary initiative requires payment from participants.

Opioid Crisis

Do you support a public health-centered approach to substance use and addiction that emphasizes decriminalization and harm reduction, increases access to treatment, and does not involve prosecution for drug possession? If yes, what specific strategies do you currently use? What other strategies would you support, both inside and outside the criminal justice system, to implement that approach?

Yes, and as Chair of the Franklin County Overdose Task Force, I work tirelessly with all community stakeholders to make sure every citizen who needs treatment has access the appropriate level of care. Further, we have made great strides together in order to build our recovery community infrastructure in this county. As an example, I am the Board President of Noah’s House, which is the first PAR-certified recovery house in Franklin County.

Please see above and attached for more information related to Get Back Up, and feel free to see the work of our Overdose Task Force at <https://www.overdosefreepa.pitt.edu/franklin-county-overdose-task-force/>, as well as the separately attached Press Release and slideshow.

Mental Health Treatment

Do you support the idea of diverting defendants with mental health issues away from the criminal justice system and into treatment and support services in the community? What programs currently exist in your county?

Yes. Please see above regarding the Co-Responder initiative, along with the separately attached slideshow titled “Police and Mental Health Collaboration: A Co-Responder Program.” This initiative has been nationally recognized (https://www.heraldmailmedia.com/news/tri_state/pennsylvania/franklin-county-program-earns-national-achievement-award/article_09a051c5-e764-5c82-b57e-541a474fe11e.html).

Mass Incarceration

Pennsylvania has the highest rate of incarceration of any state in the Northeast.^[3] Do you think that mass incarceration is a problem in the US? In Pennsylvania? If so, what do you think can be done?

What do you think are the causes of Pennsylvania’s exceptionally high incarceration rate?

I believe that the amount of crime committed, and particularly violent crime,

which results in incarceration is obviously a problem in Pennsylvania and the nation, though I respectfully disagree with the characterization of “mass incarceration.” The term “mass incarceration” unfortunately and perhaps inadvertently suggests that citizens are arbitrarily arrested and convicted for no reason whatsoever, and without no evidence or basis, which is not at all accurate. Often, on the national stage, it is suggested that prisons are filled with mostly non-violent low-level drug offenders, which I also respectfully challenge. While federal prisons may have a majority of inmates housed there serving sentences for drug offenses, that is not the case with local jails or state prisons, where more inmates are actually housed nationally. And while some inmates in local jails or state prisons in PA are there serving appropriate sentences for drug offenses, the majority are not, and most are serving sentences for violent crimes and property crimes.

There can certainly be a reasonable discussion from opposing points of view on the length of sentences for various types of crimes, but it must be premised on correct information. The majority of our local and state inmates are not serving sentences for low-level drug offenses, but rather for violent crimes and property crimes. Defendants in PA are sentenced according to our Commonwealth’s Sentencing Guidelines. From my standpoint, the current recommended sentences for crimes in PA, from our Commonwealth’s Sentencing Guidelines, are appropriate. If the citizenry through our General Assembly prospectively determines otherwise, and there is a reduction in the amount of incarceration for crimes in the Sentencing Guidelines, it would only be effective in reducing all sentences and all jail terms if it includes sentences for violent offenses. I would not support such a sentence reduction for those violent crimes, and I believe the violent crime rate in our communities would subsequently increase if that occurred.

With respect to what can be done to reduce crime, it is better to prevent on the front end rather than react on the back end. Data indicates that the overwhelming majority of crime is committed by citizens who are in lower socioeconomic strata. Most of the work to ultimately reduce crime must therefore be focused on reducing poverty and improving education for everyone.

Racial Disparities

Black men are almost nine times more likely to be incarcerated than white men in Pennsylvania are.^[4] This is higher than the national average of six times. What do you think accounts for this racial disparity in incarceration? What can your office do to help address this?

As indicated above, no citizens regardless of ethnic background are randomly

charged and ultimately prosecuted and convicted for crimes based upon a whim and without any basis or evidence. The due process protections involved from arrest to conviction ensures as best it can that is not the case. So the conviction means that a crime has been committed. Therefore and as ever, I suggest that the focus be on crime prevention, no matter the ethnic background, which includes reducing poverty and legitimate improvement of education.

Further, we should do all we can to be aware of bias and to prevent subconscious or implicit bias. As a result of the growth of cultural diversity in Franklin County and in light of the increased dialogue across our nation related to law enforcement and race, it is imperative that District Attorneys exercise leadership in the community and be at the forefront of all efforts to improve safety, education, compassion and inclusion. To that end, our office conducted Implicit Bias training in December of 2016. The training, done by Howard J. Ross, was called "Everyday bias: Identifying and navigating unconscious judgments in our daily lives." Ross is the founder and Chief Learning Officer of Cook Ross Inc., which is a diversity consulting group. The entire district attorney's office, including support staff, attorneys and detectives, attended the training. The training reviewed three areas dealing with bias: what bias is, how bias informs decision making and how to mitigate bias. The group reviewed hypothetical scenarios via case studies and work groups. This type of training is always helpful, and it is particularly beneficial when it is done in an authentic search for more knowledge rather than reacting to any particular case or incident. This unconscious bias training was brought to the Franklin County DA's Office in order to simply be proactive and remain intellectually curious and open-minded, as ever. After completion of the training, the community was made aware of our efforts via press release.

Immigrants and the Criminal Justice System

Does your office take immigration status into consideration when making charging decisions, deciding to offer a plea bargain, or making sentencing recommendations? If so, how? Is this documented?

Are there circumstances under which your office shares information about defendants, victims, or witnesses with immigration authorities? What are those circumstances, and what information is shared?

Does your office have a position on immigration enforcement within or near courthouses? If so, what is that position?

Other than eligibility for ARD, no.

With respect to Defendants, we are generally on the receiving end of information

from ICE, and make no determinations whatsoever based upon status. With respect to victims, I routinely and happily assist with information in order to help victims obtain U-Visas.

ICE does not currently include courthouses as sensitive locations (like schools, places of worship, hospitals, etc.) and I do not oppose that policy.

Schools and Policing

Does your office support and promote alternatives to arrest for school-related incidents in which there is no serious physical harm or threat to the school community? In such incidents, does your office discourage police from making these referrals?

Yes.

Life Without Parole

There are more than 5,000 people in Pennsylvania currently serving sentences of life without parole (LWOP).^[5] Pennsylvania is one of only six states that denies parole to lifers. Do you believe there are circumstances in which a person sentenced to life imprisonment should have the opportunity to be paroled? If so, in what circumstances do you believe that opportunity should be granted?

Would you support a change in the law allowing those sentenced to life to have an opportunity for parole?

No. I strongly oppose parole for inmates who have committed Murder.

Death Penalty

Under what circumstances do you seek the death penalty? Do you use a set of criteria to determine whether or not you will pursue a death sentence?

Pennsylvania law requires the presence of at least one of 18 “Aggravating Circumstances” before the death penalty may be sought by the Commonwealth in a murder case. Given the small likelihood that a death penalty be carried out in PA, and coupled with the costs and the trial delays associated with death penalty cases, the death penalty should only be sought after very thoughtful consideration. The delays associated with death penalty cases in particular cause unnecessary

amounts of distress and further suffering to surviving family members of slain victims.

[1] Prison Policy Initiative. (2017, May 31). *Era of Mass Expansion: Why State Officials Should Fight Jail Growth* [Press release]. Retrieved from <https://www.prisonpolicy.org/reports/jailovertime.html>

[2] The Council of State Governments, *Justice Reinvestment in Pennsylvania*, (2017) available at https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17_JR-in-Pennsylvania.pdf

[3] The Council of State Governments, *Justice Reinvestment in Pennsylvania*, (2017) available. at https://csgjusticecenter.org/wp-content/uploads/2017/06/6.26.17_JR-in-Pennsylvania.pdf

[4] THE SENTENCING PROJECT: [“STATE-BY-STATE DATA”](#)

[5] Nellis, Ashley. “Still Life: America's Increasing Use of Life and Long-Term Sentences.” *The Sentencing Project*, 3 May 2017, www.sentencingproject.org/publications/still-life-americas-increasing-use-life-long-term-sentences/