



Criminal Justice Reform District Attorney Questionnaire

District Attorney Name: Stephen Zappala

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?

Charging

Obviously, being subject to arrest is a very significant event in someone's life.

I immediately started to evaluate charging schemes and the discretion given historically to the police and to Magisterial District Judges.

❖ **Historical Schemes:**

- For Pittsburgh – there is a centralized office for criminal matters – “City Court”.
- We staff that office to give advice
- If we disagree as to charging, there is no mandate that the police have to follow our advice/position
- For the entire County;
 - ◆ If someone is charged – a preliminary hearing is typically held 3 to 10 days later.
 - ◆ An Assistant District Attorney will determine, based on the evidence, to charge or not to charge
 - ◆ To handle the preliminary hearing in other counties, prosecutors use the police agency that made the arrest.
 - ◆ We have reduced the approximately 50,000 criminal complaints (on average) to 17, 000 indictments (on average).
- Some of the problems:
 - ◆ Relatively minor crimes – the accused is subject to bail, and the accused can not make bail
 - ◆ Arresting in DUI’s – the person may be ARD eligible
 - 5,000 DUI’s are reviewed and approximately 4,000 are entered into ARD
 - Unless someone is hurt – jail should not be a consideration
 - ◆ Serious crimes needed much better quality control
 - ◆ Ensure that the evidence supports the charges

❖ **Changes:**

- In the time frame of 2004/2005, I made several procedural changes.
- I lobbied the PA Supreme Court to amend Rules of Criminal Procedure 509 and 519 ([See attachment 1](#))
- Rule 509 was changed so Magisterial District Judges had to issue a summons on cases (Misdemeanor 2 or lower; Misdemeanor 1, if a DUI)
- Rule 519 was changed so police who make “on view” arrests (no warrant) were:
 - ◆ Required to proceed by summons on M-2; M-1, (if DUI) unless there is an immediate threat and if it is reasonable to believe the person will not appear.
- “Summons” there is temporary detention;
 - ◆ No arrest, bail is not immediately considered, and
 - ◆ The preliminary hearing is no sooner than 20 days from the incident.
 - ◆ Allows the defense bar lead time to request diversion
 - Drug Court established in 1999
 - Mental Health Court established in 2001
 - DUI Court established in 2005
 - ◆ Gives defense time to review
 - To resolve short of prosecution
 - Determine if referral to special docket is warranted

- In 2000, the Jail Collaborative was formed. ([See attachment 2](#)) It added other tools to use for possible diversion:
 - ◆ Social Services
 - ◆ Health Care
 - ◆ Job Training
- As to “major crimes”, local rules were used to certify crimes for which prior approval of an ADA is required before the criminal complaint is filed. The certification and approval also applies to issuance of search warrants.
 - ◆ The first time I exercised my authority was in 2005, when all degrees of criminal Homicide require prior approval.
 - ◆ This requires that an Assistant District Attorney be available 24/7. ([See attachment 3](#))
 - ◆ I exercised my authority 5 additional times since: ([See attachment 4](#))
 - Sex Assaults (Felony)
 - Crimes against persons over 65 years of age
 - Robbery
 - Wiretap violations
 - 40 felonies certified through the warrant offices
- Every time we expanded the requirement that there be collaboration before charging:
 - ◆ We got better.
 - ◆ The evidence supports the charges
 - ◆ Cases are being “vertically prosecuted”.
 - ◆ Screen for use of technology and future investment
 - ◆ Assess the abilities of “specialists” and the need for training
- Still, in too many instances, crimes are being charged that we have to withdraw or modify.
 - ◆ We devised a 3-part project to modify the central office in Pittsburgh into a true charging office.
 - ◆ In process of creating two more warrant offices of this type:
 - McKeesport
 - Monroeville
 - ◆ Will address 76% of crime in Allegheny County
 - ◆ The plan is set out at [Attachment 5](#)
- The Warrant Office(s) will require:
 - ◆ In addition to the already certified major crimes
 - ◆ To collaborate – prior to filing of criminal complaint of an additional 40 crimes – mostly felonies. ([See Attachment 6](#))
 - ◆ The municipalities designated for the McKeesport Warrant Office are 29 municipal police departments, Allegheny County Police and State Police ([See Attachment 7](#))
 - ◆ The ADA’s staffing the Warrant Offices at a minimum, will ask the questions in [Attachment 8](#)

Bail

The Pennsylvania Constitution states that the majority of crimes are “bailable”. ([Attachment 9](#))

The Pennsylvania Supreme Court in implementing this constitutional provision promulgated Pennsylvania Rules of Criminal Procedure 524 and 528. ([Attachment 10](#))

As is relevant, the rule provides that a Judge can impose monetary bond.

Our office never requests monetary bail.

Bail is determined by a judge. The Judge makes their decision based in part after a recommendation by Pre-Trial Services/Bail Agency – an arm of the Courts. The Public Defender sometimes appears as an advocate for the accused. Our office does not appear when bail is first considered.

Pre-Trial Services utilizes “Risk Assessment” considerations – which have been developed and consistently re-evaluated over the last twelve (12) years - considerations that have been replicated in other jurisdictions across Pennsylvania. Based on this assessment, the President Judge only permits 1 of 3 recommendations to be made:

1. Bail with non-monetary considerations
2. Release on own recognizance (ROR)
3. No bail

The minimum “Risk Assessment” considerations are set forth in Rules of Criminal Procedure 523, and [attached as #11](#).

If someone is jailed and the Magisterial District Judge who decided bail declined to follow the Bail Agency’s recommendation, a bail modification hearing is held – typically, the next business day. Overwhelmingly, bail is modified with a strong showing of release with conditions.

Recognizing that on a number of occasions, a Magisterial District Judge will set monetary bond on relatively minor cases, bond that the accused, because they are indigent, cannot make. I asked the Supreme Court to modify the Rules of Criminal Procedure 509 and 519. As already stated, the Supreme Court took action in 2005. Recently, I sent the [attached correspondence](#) to the Chief Justice of the Pennsylvania Supreme Court to again address the issue of monetary bail.

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?

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 am generally not in favor of mandatory sentences with two exceptions; drug dealers who sell opioids and/or synthetic opioids (fentanyl), and the sentencing of repeat violent offenders under 42 PA C.S.A. 9714 (See [Attachment #1](#)).

To accomplish the goal of harsher sanctions for these types of drug dealers, I requested the Pennsylvania Sentencing Commission implement sentencing enhancements. The Commission implemented the enhancements earlier this year. Based on the existence of the enhancements, I do not believe legislative action is necessary. (See [Attachment #2](#)).

Over a number of years, there were a series of legislative actions in Harrisburg primarily beginning in 1982 dealing with sentencing intending to demonstrate the legislature was "tough on crime". This misplaced philosophy was determined to be unconstitutional for the most part - by the Pennsylvania Appellate Courts in 2015. The mandatory minimum crimes analysis is [Attachment #3](#). The impact mandatory sentences has had on prison populations has been significant. (See [Attachment #4](#))

The legislature also sought to further limit the discretion of a judicial officer in sentencing by creating a framework that identifies "mitigating", "standard" and "aggravating" considerations. The Court is expected to sentence within the guidelines except for good cause. (The form is [attached as #5](#))

In Allegheny County, the Sentencing Commission reports that in 2016 (it's most recent analysis), 78% of sentences are within the guidelines. If you consider below guideline sentences, it accounts for 97% of all sentences. (See [Attachment #6](#))

Because of the large percentage of sentences in the mitigated, and below mitigated range(s), the Courts often use probation as an incentive not to re-offend.

If there is a technical violation of probation, our office does not ask a judge to lodge a detainer unless the violation is in connection with a domestic violence case, a Protection From Abuse order, or an Indirect Criminal Contempt order. In these matters, a Domestic Violence Unit prosecutor, probation specialists, victims' advocates and the victim discuss an appropriate course of action.

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?

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?

If someone commits a "technical" violation of their probation, my office does not ask a judge to violate that person.

If someone is on probation and re-offends (i.e. commits another crime) the arresting agency would ask the probation agency, an arm of the Courts, if they intend to violate that person.

If there is a violation of the terms of probation which was imposed for a domestic violence related offense, a specially trained group of probation officers are notified and they collaborate with my domestic violence prosecution unit to decide a course of action.

The only other area(s) when personnel would be involved concerns requests from victims – of typically financial crimes – and restitution was ordered, but defendant

doesn't pay – and the victim is without means to take care of themselves or their families (i.e. elder abuse).

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?

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?

**Note: the following is a response to both the Reentry and Diversionary Programs questions.*

The idea of being “smart on crime” has been a concept we adopted at the outset of my administration. The issues of re-entry into the community, alternatives to incarceration and facilitating family support were addressed immediately. The approaches in these areas have been modified and expanded upon during my tenure.

One of the first actions undertaken was to initiate the first of five (5) Problem Solving Dockets – Drug Court in 1998-1999. These dockets were created primarily to provide alternatives to jail, to address recidivism, to know the person(s) who come into the criminal justice system and to ensure necessary treatment. Pride Court (2000), Mental Health Court (2001), DUI Court (2005), and Veterans Court (2009) were created thereafter for the same reasons. [Attachment #1](#) and [Attachment #1A](#) explains the operation of these dockets and identifies several of the initiatives designed to minimize the need to incarcerate.

Having previously formed the Criminal Justice Advisory Board (CJAB), short and long-term plans were developed through CJAB to identify, create, and implement the components of effective diversionary and/or re-entry scheme(s) from the criminal justice system.

Although components continue to be considered and/or added, long-term funding became a priority.

Consequently, in 2000 we created the Jail Collaborative. The idea was to better address the issues people face as they transition out of the county jail. In July

2016, the Jail Collaborative released its third strategic plan to continue reducing recidivism. The three-year 2016-2019 strategic plan was developed by speaking directly with those impacted by the Jail Collaborative's service, analyzing the effectiveness of past services and consulting literature on best practices. The 2016-2019 strategic plan focuses on four strategies to reduce recidivism:

- 1. Ensuring high-quality, evidence-based programs for people at a higher risk of re-offending.**
- 2. Making the transition to the community effective for each person leaving the jail.**
- 3. Reducing barriers to employment, transportation, healthcare and housing for formerly incarcerated people by developing a policy platform and advocating through its members and supporters.**
- 4. Continuing to develop and implement a comprehensive plan for diverting, treating and supporting people with behavioral health issues, including those with co-occurring substance use and mental health disorders.**

The 2016-2019 strategic plan involved an investment of \$10,242 million (see [Attachment #2](#)).

A general overview of the Jail Collaborative is also attached as [Attachment #3](#).

Accelerated Rehabilitative Disposition ("ARD") is used extensively in Allegheny County as an alternative to jail time (see [Attachment #4](#)).

The costs associated with ARD are set forth in [Attachment #4A](#).

The alternative for the more problematic drug and substance abuse cases utilize the "DUI Hotel" (see [Attachment #5](#)).

To facilitate the movement of cases , the majority of which are clearly probationary matters or will utilize the "DUI Hotel", we created Phoenix Court. My office dedicates four (4) attorneys and appropriate support staff to handle approximately 7,000 case events per year, with an average of approximately 4,000 closed cases annually.

A more specific explanation, and the types of cases screened through Phoenix Court is attached as [Attachment #5A](#).

The Expedited Disposition Program became active in 2006-2007. The program is presently conducted through Pittsburgh Municipal Court but is being reviewed for implementation through the warrant offices.

Disposition of cases at the preliminary hearing stage provides defendants with an opportunity to enter a plea at the earliest possible stage of the criminal justice system which allows them to enter appropriate treatment programs earlier, and/or allows for release from the county jail earlier, and/or reduces the potential

for the defendant to be re-arrested on a warrant for a Failure to Appear at a later court date. On average, approximately 1375 EDP pleas are entered per year. A lot of the EDP pleas involve persons with substance abuse issues who were dealing to support their habits.

A more specific explanation is [attached as #6](#).

Although not required in Allegheny County, Assistant District Attorneys are assigned to preliminary hearings. In a number of counties, the police agency involved in the arrest prosecute this stage of the proceeding. See [Attachment #7](#).

Warrant/charging offices were modified in the city of Pittsburgh, and are in stages of implementation in eastern Allegheny County. A detailed explanation is [attached as #8](#).

From time to time, the office will advocate for changes in rule(s) and/or legislation. Recently, I wrote for implementation of the “Clean Slate” legislation. The law recently passed. [See Attachment #9](#).

Also, another significant piece of legislation which involves driving privileges recently passed. At the request of a significant advocate of this legislation, Joyce Douglass, I contacted the Chair of the Senate Transportation Committee, Senator John Rafferty, and asked for the Committee’s support. Senator Rafferty did, and the legislation passed. [See Attachment #10](#).

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?

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?

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?

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?

Prior to the beginning of my tenure the Allegheny County Chiefs of Police in partnership with the Pennsylvania Human Relations Commission developed and implemented a three step "Cultural Diversity" and "Code of Ethics" training program beginning in 1996. ([Attachment 1](#))

The final phase of our "Three Step Training Program" was completed when, in conjunction with the Western Pennsylvania Chiefs of Police Association, the Allegheny County District Attorney's Office and the United States Attorney's Office collectively, we sponsored a "Train the Trainers, Instructor Development-Cultural Diversity" program in which twenty-four (24) instructors from the federal, state and local level were certified as "Instructors" to teach "Cultural Diversity" to recruits, police officers and supervisors. At the time, Pennsylvania was one of only seven (7) states to undergo this type of training and the only county-wide program in the nation was here in Allegheny County.

We also created a companion training program that addressed "Racial Profiling".

The Municipal Police Officers Education and Training Commission (M.P.O.E.T.C.), the entity that determines the training for police officers, followed Allegheny County's lead and developed a similar program as part of mandatory in-service training.

The outlines for the M.P.O.E.T.C. classes are [attached as #2](#).

The curriculum is set forth in [Attachment #3](#).

The instructional objectives and outlines are [attached as #4](#).

The Police Academy reports that every officer in Allegheny County was trained in these courses in 2017; likewise, new officers have been trained in these courses in 2018.

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?

[Letter from DA Zappala's office regarding immigrants and criminal justice.](#)

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?

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?

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?

[Memo provided by DA Zappala's office regarding the death penalty.](#)

[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/