

Berkeley Progressive Alliance Questions for Alameda County DA candidates

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Money Bail

1. Are you in favor of doing away with money bail? Why?

I am strongly in favor of eliminating money bail. Money bail creates a tiered justice system, one for poor people and one for rich people. It criminalizes poverty by keeping people locked up not because they have been guilty of any crimes or are a threat to public safety, but simply because they don't have enough money to post their bail. Meanwhile, rich people can simply post bail and leave custody even if they pose a threat to public safety. Money bail doesn't advance public safety and it perpetuates inequality.

Furthermore, the racial disparities in who is currently incarcerated for inability to post bail are outrageous. People of color are disproportionately held in custody due to their inability to post bail, which forces people to plead guilty just to get out of jail. Money bail is also wasteful. Over the course of two years, experts estimate that Alameda County [spent \\$14.8 million dollars](#) to incarcerate people who the prosecutor ultimately did not charge or whose charges were dismissed. These funds can be reallocated to prevent crime by supporting re-entry efforts, including job placement and housing assistance.

2. How do you (or will you) monitor those in your office to prevent abuse of the current money bail system?

I have supported legislative efforts to reform money bail on the statewide level, including SB10 for many years, and will continue to do so as District Attorney. As District Attorney, I will significantly expand the pre-trial release program in the county with the presumption of release and release on recognizance for people, unless there is credible evidence that a person poses a serious flight risk or a threat to public safety. All my ADAs (Assistant District Attorneys) will be notified and expected to follow this policy. If an ADA believes a person is a flight risk or a threat to public safety and wants to keep them in jail until their day in court, they will have to seek approval from a team of supervisors and present

credible evidence for their assessment. If we determine that a person must be incarcerated prior to conviction for any reason, we will also initiate and cooperate in efforts to expedite the resolution of the case.

Juveniles

3. Under what circumstances do you think a juvenile should be prosecuted as an adult?

There are no circumstances under which I believe a juvenile should be prosecuted as an adult. The development science is clear that young people don't fully grow into their faculties until their mid twenties. Numerous studies have shown the devastating harms of prosecuting children as adults. Prosecuting youth as adults not only destroys their lives, it does nothing to make our communities safer.

I believe the best way to deal with youth is through investments in education, after school programs, targeted employment, and age appropriate interventions when they do commit crimes. My efforts will be dedicated to establishing neighborhood courts, community service alternatives, and restorative justice programs for youth.

Death Penalty

4. What determinates would go into such a decision to ask for a death penalty?

The voters in Alameda county have voted twice (in 2012 and 2016) to abolish the death penalty. There have been too many instances of innocent people who have been executed or sent to death row and later exonerated for us to risk making such an irreversible mistake. Furthermore, the racial disparities in death row inmates is stark and disturbing. I will respect the wishes of Alameda County voters and not seek the death penalty if I have the honor of being elected as your District Attorney.

Rape

5. In light of all the media attention surrounding sexual harassment and rape, what criteria will your department use to decide whether to prosecute these crimes?

Sexual harassment, sex trafficking, and sexual assault are all serious issues and should be dealt with appropriately. My primary concern when dealing with crimes involving sexual harassment, trafficking and/or assaults is the well being of the survivor. My office will do everything in our power to make sure that survivors are supported throughout their healing process. I will expand our investment in survivor/witness and family support services and ensure fairness and compassion in responding to all survivors, regardless of their age, race, or economic background. Harassment or assault will be prosecuted in accordance with existing laws to hold predators, including law enforcement personnel, equally accountable.

Victimless Crimes

6. What is your policy with regard to prosecuting non-violent political resistance and protest?

People have a right to express their political views through protest and resistance. That is the basic premise of democracy and the times we are in certainly call for it. When many Black Lives Matter protestors shut down BART temporarily in November 2014 to raise awareness about the unjustified killings of Black people by law enforcement, Nancy O'Malley decided to charge those brave activists. It took months of tremendous public pressure to persuade O'Malley to drop those charges.

I will not prosecute cases of non-violent political resistance and protest. Such prosecution, apart from being frivolous and a waste of everyone's time and taxpayers' money, does not advance justice, as is the mission of the District Attorney's office. It also has a chilling effect on people's willingness to engage in a democracy and express their outrage at obvious injustices. Studies and practical experience have also shown that civic engagement by formerly incarcerated persons helps to reduce recidivism.

Crimes involving police

7. Should the DA's recommended sentencing for a crime be different if the victim is a police officer? If so, why?

I believe in equal justice under the law. If we believe all lives have equal value, why would we act as if some lives are worth more than others? I believe the sentencing recommendations should be comparable for civilian or law enforcement victims.

8. Is there a different standard for choosing whether to prosecute a police officer or a civilian of a crime?

No. To reiterate, I believe in equal justice under the law. If we believe all lives have equal value, why would we act as if some lives are worth more than others? I believe that charging decisions should be comparable for civilian and law enforcement officials.

Police Latitude

9. When are police justified in using pain compliance to force non-violent protestors to obey? If unjustified pain compliance is used, how will the DA office deal with such charges?

I believe almost all non-violent protests can be resolved peacefully with de-escalation tactics without having to resort to force. "Pain compliance" against a non-violent protester is probably unconstitutional conduct. My office will create a special "Police Accountability Unit" to thoroughly investigate all allegations of police misconduct including unjustified and unlawful use of force.

10. Under what circumstances would the DA office prosecute police for extreme use of force? Provide an example of the "least" extreme use of force where prosecution is justified.

The greatest danger to public safety with respect to police is the unjustified use of force, which creates a justifiable lack of public trust. As your next District Attorney, I will establish a “Police Accountability Unit” that will vigorously investigate and prosecute all allegations of unlawful conduct by law enforcement officers. Past allegations of unlawful police misconduct include sex trafficking, sexual assaults, unconstitutional conduct, perjury, obstruction of justice, bribery, racially biased policing, and even killings of civilians by law enforcement officers. I will not tolerate unlawful conduct by police officers who abuse the power they are given by the public to protect and serve our communities.

One “real-life” example of the “least” extreme use of force where prosecution is justified is the practice of handcuffing Blacks in Oakland. The Stanford study exposed that, in 2014, OPD handcuffed 193 Whites and 2,890 Blacks without making an arrest. Handcuffing innocent people based on race is a demeaning, coercive, and likely unconstitutional practice that needs to end immediately. I would look to see what prosecutorial options are available to combat and stop this practice.

Jail or Rehabilitation, Charging and Plea Deals

11. What steps will you pursue to reduce the recidivism rate?

Our core mission in reforming the criminal justice system is “give everyone a second chance at a first class life.” I believe in smart interventions that focus on the strengths of the people who come into contact with the criminal justice system. I will significantly expand pre-arrest and post-arrest diversion and restorative justice programs for youth and adults, people with substance use disorders, and first time offenders. We will seek out alternative dispositions for people with disabilities (mental or physical), and establish or expand veteran courts, drug courts, neighborhood courts, and homeless courts.

My office will support community alternatives to incarceration and other punitive measures. I will establish strong partnerships with community organizations, faith based groups, labor unions, local businesses, and other stakeholders to make sure we collectively create sustainable support systems for people to get back on their feet and live productive lives of dignity. I believe in investing heavily in prevention programs, strong public schools, afterschool programs, mentorship programs, quality healthcare, affordable housing, and full employment for all.

12. What is your position on the DA’s office overcharging a defendant in order to extract a plea deal? Is this a valid bargaining technique?

The mission of the District Attorney is to seek justice, not convictions. I vehemently disagree with this practice, I believe it is contrary to basic principles of fairness, and I think it violates the constitutional mandate of the District Attorney. I do not believe it is a valid bargaining technique or a morally acceptable practice to overcharge someone in order to secure a conviction. All ADAs in my office will be instructed to pursue charges

that they believe they can prove in court beyond reasonable doubt at the time of the charging. I will have a collaborative working relationship with the office of the Public Defender in order to achieve our shared objective, which is justice with equal and due process for all. If any ADAs are overcharging defendants, they will be disciplined appropriately, which includes demotion or termination.

13. What is the primary goal in recommending sentencing (punishment, public deterrent, rehabilitation)?

In our current system, the primary goal of recommending harsh sentences is punishment and incapacitation. Given the terrible conditions in most of our prisons and jails, nobody can argue that incarceration is having the intended rehabilitative impact on incarcerated people. However, in an ideal world, if we are to have a society that has prisons, they would also serve a rehabilitative function by providing incarcerated people with wraparound services to resolve the issues that drove them to commit the crime in the first place and prepare them for re-entry into society. These services ideally would range from counseling, housing assistance, job training and other services as needed prior to their release. The exception to this would be mental health services, which I am not persuaded can be provided in an environment of incarceration. Our efforts to do so up to now have failed miserably and we need to look for alternative ways of providing these desperately needed services.

Systemic Problems

14. How will your office handle crimes that involve the mentally ill, or mentally challenged? What is your policy in charging those who have mental disabilities?

I would expand specialty mental health courts and services and work to swiftly identify any pretrial detainees with a mental disability to assess whether there are appropriate diversion programs and diversion services depending on the seriousness of the crime. If we determine that a serious crime has been committed by a mentally disabled person, we will consider the impact of the disability on the person's conduct in determining the appropriate charge and disposition.

As I mentioned in the last question, I am unconvinced that therapeutic mental health services can be provided in an environment of incarceration. Our efforts to do so up to now have failed and we need to investigate alternatives.

15. Do you agree that policing involves systemic racism? If so, how will your office deal with the injustice of this system?

Of course. Black children make up less than 13% of the county but are 53% of felony arrests. There is no way you can have such outrageous disparities and not think policing in this country, and certainly in this County, doesn't involve systemic racism. My office will deal with systemic racism in the following ways:

- a. **I will fully enforce the Negotiated Settlement Agreement (NSA) the Oakland Police Department has been under for over a decade and support the efforts of the police commission that the Oakland voters recently passed to hold police accountable;**
- b. **I will ensure that all law enforcement agencies in Alameda County adopt the “best practices,” guidelines and standards developed under Oakland’s NSA;**
- c. **I will create a “Police Accountability Unit” in my office that will vigorously and transparently investigate and prosecute all unlawful police misconduct; and**
- d. **I will initiate and pursue a review of all cases charged in the past 7 years to identify any prosecutions by my office where racially-biased policing impacted the disposition of the case and seek to provide appropriate remedies to ameliorate the harm caused.**

16. Do you acknowledge that systemic racism exists in the DA office? If so, how will your office deal with the injustice of this system?

Of course. A recent study by the Center On Juvenile and Criminal Justice, the Burns Institute, and the National Center for Youth Law found that between 2010-2016 in Alameda County, Black youth were 65 times more likely and Latino youth were 27 times more likely to be prosecuted as adults than White youth. Only systemic racism in the current DA’s decision-making process can explain those disturbing disparities. I will address the issues of systemic racism in the DAs office in the following manner:

- a. **Examine all the current data and identify data gaps that can reveal to us where exactly the racial disparities are originating and how they can be stopped. I will work with experts like the Vera Institute who have done this type of assessment with DAs in other counties throughout the nation.**
- b. **All the ADAs will receive continual training on systemic racism and implicit bias as part of their professional development.**
- c. **I’ll implement fair and just charging policies that are designed to reduce incarceration. For instance, to address the above mentioned disparities with regard to youth of color being prosecuted as adults, I will institute a policy to never charge any youth as adults under any circumstances. That would totally eliminate the racial disparities in the prosecution of youth as adults.**
- d. **Finally, I will initiate and pursue a review of all cases charged in the past 7 years to identify any prosecutions by my office where racially-biased decision-making impacted the disposition of the case and seek to provide appropriate remedies to ameliorate the harm caused.**

DA office management

17. What fraction of DA resources will go into white collar crime? Which crimes receive the greatest resources and which are a low priority?

Resources in the DA office will be allocated appropriately to respond to the types of crime that are causing significant harm to our community. I will focus more resources on white collar, environmental crimes, wage theft, and official corruption. I will also focus greater attention and resources on gun violence and violent deaths.

Low priorities will be quality of life crimes (drunk in public, trespassing, etc), misdemeanors, and low level first time offenses. These offenders will be held accountable through neighborhood courts and community service, while connecting them with the social services necessary to address their underlying issues and diverting them away from the criminal justice system.

18. How will your staff select between punishment and rehabilitation?

My staff ethos will be to always seek diversion and rehabilitation whenever possible. Staff will be trained and instructed to seek rehabilitation options before considering punitive options for most charges. When staff seeks punishment, they will have to justify their decision by presenting a credible case that a person has committed significant harm and is an imminent threat to public safety. In those situations, ADAs will be required to recommend sentences that are proportional to the harm and take into consideration that people can rehabilitate and should have an opportunity for a second chance when the time is appropriate.

19. What metrics do you (or will you) use in supervising the DA office to make sure assistant DAs comply with the policies that you set? What metrics do you (or will you) use to rate staff performance?

With the assistance of national experts and advocates for criminal justice reform, I will review the past practices of the DA's office and establish a benchmark from which to move forward. Then, we will constantly monitor the County's incarceration and racial disparity metrics. These metrics will help me know which ADAs are complying with office policies to reduce incarceration and racial disparities and which ADAs are not. I will also have a close working relationship with the Public Defender's office and community organizations working on criminal and social justice in Alameda County to make sure we have a constant feedback loop between us and the community to know what my ADAs are doing on a constant basis.

I will track how many people an ADA is diverting away from the criminal justice system, the length of sentences ADAs are recommending, how immigration consequences are minimized in charges and dispositions, and how each ADA is working to reduce racial disparities. These metrics will be used to evaluate staff performance.