

The Power of a Prosecutor:

Orleans Parish District Attorney
Candidate Briefing



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SMART
JUSTICE
Louisiana

Dear Candidate,

We are in the midst of an incarceration crisis that is tearing apart families, exacerbating racial injustice, and costing New Orleanians millions—while at the same time failing to improve public safety. No single person in Orleans Parish has as much power to bring this crisis to an end as the district attorney.

Louisiana locks its people in prisons and jails at a higher rate than any state in the nation, both as a result of a criminal conviction and during the pretrial process, typically because people cannot afford bail.¹ Black Louisianans bear the brunt of mass incarceration in our state: they account for 66.5% of the people in the state correctional system despite accounting for 32% of the state's population,² and Black people are more than twice as likely to be jailed following arrest, without conviction, than white people.³

Harsh criminal statutes have laid the foundation for mass incarceration in our state, but district attorneys exercise their discretion differently, and not all parishes have contributed to the crisis equally. For the last decade, Orleans Parish has been one of the most significant drivers of incarceration and racial inequity in Louisiana's criminal legal system.

As a candidate for Orleans Parish District Attorney, you are uniquely positioned to usher in a new era of smart-on-crime policies that can safely and effectively reduce incarceration and racial injustice.

Moreover, your voters are ready for these changes.

A June 2020 poll conducted by Dr. Silas Lee & Associates shows that Orleans Parish voters overwhelmingly support district attorney candidates who will commit to ending mass incarceration, confronting racism in the criminal legal system, and implementing systems to ensure transparency and public integrity in the DA's office.

This briefing book will be publicly available to all candidates running for Orleans Parish District Attorney. The purpose of this briefing book is to encourage candidates to embrace firm policy commitments that will reduce jail and prison populations and challenge racism in the criminal legal system.

The ACLU of Louisiana is a member of the [People's DA Coalition](#) and is working to educate voters about their power to elect a reform-minded district attorney who aligns with our values. Our goal is to ensure all candidates are challenged on their commitments to pursuing justice, not just convictions. We hope you will respond positively to that challenge.

Sincerely,

Alanah Odoms
Executive Director
ACLU of Louisiana

¹ See Louisiana Dept. of Safety and Corrections, *Briefing Book: January 2020 Update* at 18; ACLU of Louisiana, *Justice Can't Wait: An Indictment of Louisiana's Pretrial System* at 7 (March 2020).

² Louisiana DOC, *supra* note 1.

³ ACLU of Louisiana, *supra* note 1, at 8.

Who We Are

The ACLU of Louisiana's Campaign for Smart Justice is an unprecedented, multi-year effort to reduce Louisiana's jail and prison population by 50 percent and to combat racial disparities in the criminal legal system. This year in New Orleans, we proudly join the [People's DA Coalition](#) to educate voters on candidates' positions and encourage Orleans Parish District Attorney candidates to embrace the [Coalition's Platform for a Reform District Attorney](#).

Why We Must End Mass Incarceration

Imprisonment is a brutal and costly response to crime that traumatizes incarcerated people and hurts families and communities. Louisiana has both the highest post-conviction incarceration rate and the highest rate of pretrial incarceration in the United States.

This has come at a tremendous cost to families, communities, and taxpayers, especially in New Orleans. Orleans Parish accounts for 8.4% of the state's total population, but it accounts for 20% of people serving life sentences and 31.9% of people sentenced with habitual offender enhancements.⁴

Statewide, racial disparities in pretrial incarceration are stark, but in New Orleans

they truly shock the conscience. Black boys and men 15-24 in Louisiana are 5 times more likely than their white counterparts to be held in jail following arrest, without conviction. In Orleans Parish, young Black men are 19.4% more likely to be jailed than their white counterparts.⁵

Louisiana taxpayers spend billions on our incarceration system, but these investments have failed to produce a meaningful return in the form of public safety. Louisianans send almost \$1.2 billion per year to the Department of Corrections⁶ and spend an estimated \$290 million annually to jail people pretrial, without conviction.⁷ Jailing one person in the Orleans Justice Center for a single day costs taxpayers \$188.⁸

We also know it doesn't have to be this way. In Louisiana, we have seen firsthand the significant cost savings that comes with reducing incarceration. In the first two years following the state's passage of Justice Reinvestment legislation in 2017, the state reduced its prison population by thousands and saved taxpayers nearly \$30 million, all without an increase in crime.⁹ In New Orleans, we do not have to wait for state leaders to go further. The district attorney can single-handedly transform our local reliance on incarceration and lay the groundwork for other investments that will help our community thrive.

⁴ Louisiana DOC, *supra* note 1, at 29, 39.

⁵ ACLU of Louisiana, *supra* note 1, at 8.

⁶ Supreme Court of Louisiana, 2019 [Annual Report of the Judicial Council of the Supreme Court](#) at 12.

⁷ ACLU of Louisiana, *supra* note 1.

⁸ *Id.* at 37.

⁹ Grace Toohey, "[Louisiana sees rise in savings, further drop in prison population from 2nd year of justice reforms](#)," *The Advocate*, July 19, 2019.

How District Attorneys Can Help Us Get There

District attorneys in Louisiana have more power than any other elected official to make immediate changes to reduce incarceration and combat the systemic racism that characterizes our carceral system. A district attorney determines the policies and procedures that dictate how cases are prosecuted in a county, how diversion programs are implemented, how plea deals are negotiated, and ultimately how many residents sit behind bars.

Importantly, district attorneys are influential at the state legislature and can use their collective voice to encourage lawmakers to pass sensible, effective, bipartisan criminal legal reforms while rejecting proposed laws that take us backward—like new mandatory minimum sentences, doubling down on Louisiana’s harsh habitual offender statute, and adding unnecessary sentencing enhancements that wreak havoc on communities and strain our criminal legal system.

Many prosecuting attorneys across the nation are doing exactly this. A movement of recently elected, reform-minded district attorneys have implemented bold policies on the first days of their administrations—which is evidence that voters are ready for these changes. These positive changes have had an immediate impact to reduce jail and prison populations and have created a structural framework to tackle racism in the criminal legal system.

The welcome wave of transformational prosecutors is supported nationally by professional groups that provide policy advice and camaraderie for prosecutors committed to implementing a reform agenda. Organizations like the Vera Institute for Justice, Fair and Just Prosecution, the Institute for Innovation in Prosecution, Prosecutor Impact, and others are helping newly elected prosecutors succeed in reducing incarceration and tackling racial injustice.

Orleans Parish Voters are Ready for Reform

The ACLU of Louisiana partnered with Dr. Silas Lee & Associates in June 2020 to conduct a public opinion poll of likely Orleans Parish voters. The results throughout this briefing book demonstrate that voters are ready for a district attorney to embrace smart-justice values.

How Candidates Can Embrace Our Vision

Across the country, there is a movement to create district attorney’s offices that are ethical, equitable, compassionate, and accountable to the public, in order to reverse the decades of damage they have caused to communities. District attorneys have the power to drastically reform the way their offices prosecute and have an extremely influential platform from which to be vocal advocates for criminal justice reform. The Orleans Parish District Attorney will be instrumental in ending the era of mass incarceration in New Orleans.

The ACLU of Louisiana endorses the [People’s DA Coalition Platform for a Reform District Attorney](#) as a path to create a fairer system that reduces incarceration, promotes transparency and accountability within the DA’s office, and combats racism in the criminal legal system. We encourage candidates to adopt the full platform, commit to specific and measurable goals within the first term in office, and explain their plans to achieve those goals.

Decarceration

A district attorney should see it as their responsibility to play a role in ending mass incarceration. New Orleans' contributions to Louisiana's prison population are unsustainable and require a dedicated, intentional, and aggressive effort to reverse course.

Pathways to Reform

- Commit to a specific, measurable decarceration goal.
- End all use of the “multi-bill” (i.e., the habitual offender law), which serves to lengthen the most punitive sentences in the nation.
- Consider and pursue alternatives to confinement in all possible convictions and make recommendations to the court after discussions with the defense regarding mitigating evidence.
- Invest in restorative justice programming and make it available in lieu of prosecution in any case where both the survivor and accused party have provided their informed consent.
- Expand eligibility for diversion for pre-arrest, pre-arrest, and pre-arrest dispositions.
- Expand access to diversion programs for both felony and misdemeanor charges.
- Implement policies to ensure alternatives to confinement are accessible regardless of a person's ability to pay or responsibilities to family and work.
- Decline to prosecute possession, or refuse to prosecute marijuana offenses as state-law offenses if they are punishable under a municipal ordinance.
- Decline to prosecute offenses associated with poverty, health, and lifestyle, such as solicitation on an interstate highway, obstructing public passages, driving with a suspended license, failure to pay fines and court fees, loitering, trespassing, sex work, and low-level shoplifting and drug offenses.
- Use the Orleans Parish District Attorney's prominent voice to advocate to the Legislature for evidence-based policy to reduce incarceration and combat racial disparities in Louisiana's criminal legal system.

Where It's Been Done

Dallas County District Attorney John Creuzot ran on a promise to decrease jail and prison admissions by 15-20% within four years. Shortly after his election, his office stopped prosecuting theft of necessary items under the value threshold of \$750.¹⁰

Since taking office in 2016, Cook County District Attorney Kim Foxx has declined to prosecute more than 5,000 cases that would have otherwise been pursued by her predecessor. Foxx did this by diverting people into treatment programs and declining to prosecute low-level shoplifting and drug cases.¹¹

Prosecuting Attorney Dan Satterberg of Seattle has been resentencing people in prison who are serving a life sentence for relatively minor crimes. Often, these individuals are in prison under a three strikes law. Satterberg and his staff review old cases and sign onto clemency petitions where appropriate. So far, Satterberg and his committee have re-sentenced 16 people who were unfairly incarcerated. “I think a prosecutor has a continuing obligation to justice, past the sentencing date,” he said.¹²

¹⁰ [ACLU of Texas Comment on Dallas County District Attorney-Elect John Creuzot Victory](#), Nov. 6, 2018.

¹¹ Matt Daniels, [The Kim Foxx Effect: How Prosecutions Have Changed in Cook County](#), The Marshall Project. Oct. 24, 2019.

¹² Eli Hager, [“The DAs Who Want to Set the Guilty Free,”](#) The Marshall Project. March 20, 2018.

New Orleans Voters Want to Reduce Incarceration

■ Very important
 ■ Somewhat important
 ■ Not too important
 ■ Not at all important
 ■ Don't know

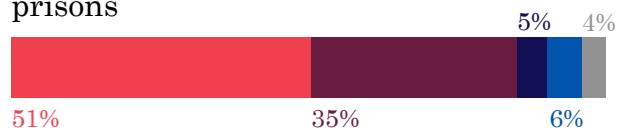
Reducing the number of people locked up in prisons and jails



Total important 86%

Total unimportant 11%

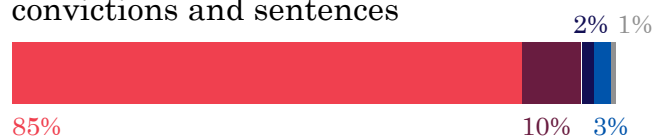
Reducing tax dollars spent on jails and prisons



Total important 86%

Total unimportant 11%

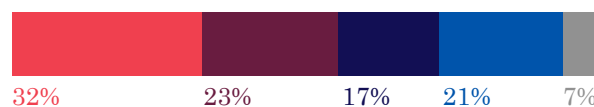
Preventing racial disparities in convictions and sentences



Total important 95%

Total unimportant 5%

A district attorney should not enhance people's sentences using the habitual offender law.



Total important 55%

Total unimportant 38%

Prosecuting traffic offenses as criminal cases



Total important 35%

Total unimportant 59%

Transparency & Public Integrity

Too little information is made public about how a district attorney's office operates, how many cases are charged, how many people are sentenced to prison or held in jail without conviction, and who is diverted. This prevents the people from evaluating how their elected officials are aligning with community values and how taxpayer funds are being utilized. The lack of transparency in the Orleans Parish District Attorney's Office, combined with its infamously high rate of wrongful convictions, has severely damaged the community's trust. Fully transparent policies, practices, and outcomes enable public understanding of the prosecutor's role and job performance and allow voters to hold their prosecutors accountable.

Pathways to Reform

- Include people most affected by incarceration, community leaders, and criminal justice reform advocates in the development of your first-100-day plan.
- Gather and publish comprehensive case data, including statistics on the race, gender, age, and geography of defendants, along with information about charging decisions, adjudications, and diversion; variations between arrest charges and charges associated with a final disposition; fines and fees associated with any case, including those related to diversion, warrants issued for failure to pay, and collections efforts; and the use of evidence obtained through surveillance technology.
- Make public all office policies and protocols, including any policies relevant to the exercise of prosecutorial discretion, diversion program

eligibility, training curricula and materials, and annual budget information.

- Establish an inter-organizational Conviction Integrity Unit and staff a Chief Integrity Officer who reports directly to the district attorney, responsible for identifying potential wrongful convictions and reviewing the appropriateness of sentences.
- Commit to advocating for funding parity between the District Attorney's office and the Orleans Public Defenders.
- As a means of accountability to the community for campaign promises, commit to engaging personally and directly with the community on at least an annual basis, through the People's DA Coalition Forum.
- Hold police accountable with independent investigations when police kill or seriously injure a member of the public.
- Maintain a list of all police officers who have a history of dishonesty, perjury, excessive force, and other misconduct, and commit not to use or rely on those officers' reports or testimony in prosecutions.
- End inquiries into the immigration status of people charged with crimes or survivors of crime, except to assist survivors in obtaining special crime-victim visas.

Where It's Been Done

Cook County State's Attorney Kim Foxx released six years' worth of case-specific prosecutorial data. The data was released online and easily accessible, allowing the public to sort through a case from beginning to end. Foxx also directed her office to strengthen the Conviction Integrity Unit, which so far has overturned convictions in 80 cases, including 15 cases involving police misconduct.¹³

¹³ [Kimberly M. Foxx](#). November 20, 2019.

New Orleans Voters Want Transparency and Integrity

■ Very important ■ Somewhat important ■ Not too important ■ Not at all important ■ Don't know

Promoting transparency by sharing data, public information, and policies with the public



Total important 92%

Total unimportant 6%

■ Much More Likely ■ Somewhat more likely ■ Somewhat less likely ■ Much less likely ■ Don't know

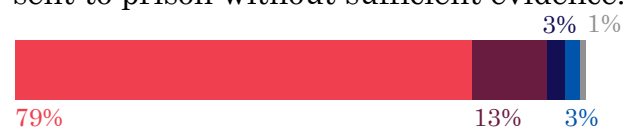
Publish statistics so the public can see how prosecutors are charging and sentencing people to prison, including any racial or gender disparities



Total more likely 89%

Total less likely 6%

Create a department in the District Attorney's office to look into old cases where an innocent person may have been sent to prison without sufficient evidence.



Total more likely 92%

Total less likely 6%

Pretrial Reform

In the last four years, Louisiana's pretrial incarceration rate has grown 10.3 percent, giving the state the highest rate ever recorded by the Department of Justice since 1970.

Black people in Louisiana are more than twice as likely to be held in jail following arrest—without conviction—than white people. In Orleans Parish, young Black men are nearly 20 times more likely to be jailed pretrial than their white counterparts. Holding one person in the Orleans Justice Center costs taxpayers \$188 per day. Because a person's freedom before trial generally depends on their ability to pay bail, rather than evidence of danger to the community, our heavy reliance on pretrial incarceration does not make us safer. Instead, the days, weeks, and even months people are held in jail upend their lives, leading to lost

jobs, lost income, lost homes, and more trauma and poverty in our community. The district attorney has unmatched authority to reduce pretrial incarceration and focus the pretrial system on safety and justice, not a defendant's wealth.

Pathways to Reform

- Eliminate the recommendation of setting money bail.
- Establish a presumption to recommend release on personal recognizance and set specific thresholds for prosecutors to seek other non-financial or financial conditions.
- Do not seek detention without specific evidence of the defendant's flight risk or of a clear and immediate threat to a person.

- Seek only the least restrictive bond conditions necessary.
- Support bond reduction requests for people unable to afford the amount initially set.
- Preserve the speedy trial rights of defendants by attending all magistrate hearings to assist in the speedy refusal of cases and, with the exception of crimes punishable by life in prison, commit to charging all cases within five days or releasing the defendant without bond.
- Recommend the release of people held in jail based solely on technical violations of probation or parole.
- Turn over all evidence to defense counsel immediately upon receipt.
- Eliminate the coercive nature of the plea-bargaining process by offering pre-plea open file discovery before negotiating and exclude waivers of constitutional rights.

Where It's Been Done

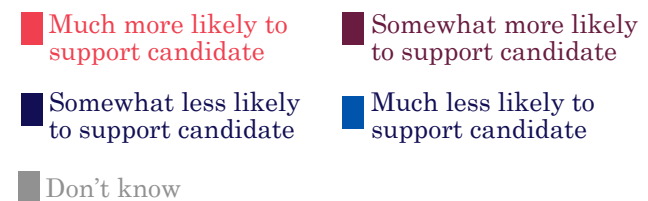
In 2019, East Baton Rouge District Attorney Hillar Moore and the criminal courts of the 19th Judicial District Court piloted a 72-hour expedited arraignment process. In just 8 weeks, 225 defendants (19.2% of all defendants) were informed within 72 hours of arrest that their cases had been declined by the DA and were released from jail. Under the previous process, those defendants would have waited in jail for 2 months to have their cases dismissed.

Philadelphia District Attorney Larry Krasner stopped seeking cash bail for most offenses. In one year, 1,750 people who otherwise would have been behind bars because they couldn't afford bail were released, marking a 24% drop in Philadelphia's jail population. There was no negative impact on

court attendance and no increased recidivism while those released were awaiting trial at home.

San Antonio District Attorney Joe Gonzales expanded the county's "cite and release" program, where defendants avoid jail in favor of a diversion program, to include lower level offenses like misdemeanor theft and driving with an invalid license. Gonzales also directed his office to allow the release of defendants on personal recognizance absent a finding of flight or public safety risk.¹⁴

New Orleans Voters Want Pretrial Reform



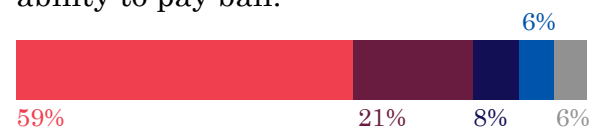
For anyone accused of a crime and locked up in jail, ensure that they have a hearing in front of a judge within 2 days, so the judge can decide whether they should stay in jail until the trial.



Total more likely to support candidate 88%

Total less likely to support candidate 7%

Make decisions about who to lock in jail based on public safety, not a person's ability to pay bail.



Total more likely to support candidate 80%

Total less likely to support candidate 14%

14 Bexar County District Attorney, "[Update on New DA Policies and Initiatives](#)," May 16, 2019.

Juvenile Court

The Orleans Parish District Attorney exerts tremendous influence on how young people are treated in the criminal legal system. The DA makes charging decisions, determines whether a young person will be tried as an adult, and ultimately, whether and for how long a young person is incarcerated. We know that most people who engaged in risky behavior or criminal activity in their youth do not continue to do so as adults. That is why the United States Supreme Court, in a series of landmark decisions, declared that mandatory life sentences for juveniles are unconstitutional and directed the resentencing of all people sentenced to life imprisonment as juveniles. In its decision, the Court warned that only in “rare and unusual” cases should a juvenile be sentenced to life without parole.

Pathways to Reform

- Never prosecute children in adult court, and never incarcerate them in adult jails or prisons.
- Divert kids from formal prosecution as often as possible
- Recommend commutation of sentences for kids previously convicted in adult court
- Refuse to prosecute children for behavior that can be handled through school disciplinary processes.
- Never criminalize or seek to impose fines on the families of system-involved youth.
- Ensure that incarceration is the rare exception for children and that sentencing decisions do no harm.

Where It’s Been Done

The Harris County, Texas District Attorney’s Office has vastly changed how its office reacts to juvenile behavior, working early on with police to determine whether a young person should be arrested at all. In making that decision, the office policy requires prosecutors not to focus simply on whether they could prove the case, but also to consider whether this is typical behavior for that age, whether they have any disabilities, and their child welfare status. Rather than opting to arrest young people, prosecutors usually divert them into community-based programs. One of these diversion programs, for example, is available for all minors who would otherwise be arrested for their first misdemeanor or non-violent felony—and has an 87% success rate of no arrests by age 18.¹⁵

In February 2020, 30 elected prosecutors—including Ingham County Prosecuting Attorney Carol Siemon and St. Louis County Prosecuting Attorney Wesley Bell—joined dozens of other criminal justice leaders in signing an amicus curiae brief to the Eighth Circuit Court of Appeals, urging it to support the due process rights of people in Missouri who were sentenced to life without parole as children. Miriam Krinsky, Executive Director of Fair and Just Prosecution, argued: “We know that children are fundamentally different than adults... justice and the law dictate that we revisit these sentences and evaluate them through a process that is fair and transparent and creates opportunities for individuals sentenced as children to return to their communities.”¹⁶

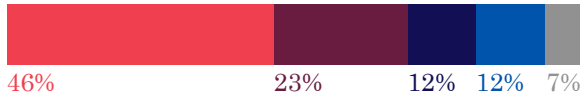
¹⁵ Annie E. Casey Foundation, [Webinar Highlights Prosecutor-Led Juvenile Justice Reforms](#) (Feb. 25, 2020).

¹⁶ Fair and Justice Prosecution, Press Release, [Elected Prosecutors Call for Relief for Individuals Sentenced to Life Without Parole as Children](#) (Feb. 20, 2020).

New Orleans Voters Want a DA Who Treats Kids Like Kids

■ Much More Likely ■ Somewhat more likely ■ Somewhat less likely ■ Much less likely ■ Don't know

Prosecute youth under age 18 only in juvenile court, instead of charging and sentencing youth as adults.



Total more likely 69%

Total less likely 24%

Conclusion:

New Orleans voters are ready for real reform that will confront and dismantle racial disparities in our criminal legal system and end mass incarceration. As a candidate for district attorney, you have the power to radically transform our criminal legal system. Through a commitment to racial justice, decarceration, pre-trial reform, juvenile justice, transparency, and public integrity, you can help bring New Orleans into an era of smart justice.