

April 25, 2019

To Whom it May Concern,

As the deep flaws in our justice system become increasingly apparent, elected chief prosecutors throughout the country are using their considerable power to make local courts more fair and less thoughtlessly punitive, increasing faith in the system and breaking the cycle of mass incarceration, all without presenting a risk to public safety. In 2019, these same issues are front and center in Arlington County and the City of Falls Church, Virginia, where voters will decide about the future of their local criminal courts. We offer a unique perspective on this subject—we are over 100 attorneys, all of whom have worked in Northern Virginia in the fields of criminal law, justice policy and civil rights. We are writing because we have serious concerns about the state of the Arlington County criminal justice system.

We are concerned that nearly 98% of felony convictions in Arlington are the result of the defendant pleading guilty, exceeding the rate in all local jurisdictions (Alexandria: 91%; Fairfax/Loudoun: 93%) and even in the federal courts (97%). We are concerned that the low incidence of trials in Arlington is mainly due to overcharging and the fear of harsh consequences if a defendant does not accept a plea bargain.

We are concerned that Arlington convicts defendants of felonies at more than twice the rate of neighboring jurisdictions, despite its very low crime rate. We are worried that this reflects a culture of overcriminalization.

We are concerned that the Arlington County Commonwealth's Attorney's discovery policy, which prohibits the use of technology to obtain copies of police reports and other documents, places unique and arbitrary restrictions on the discovery process, making it needlessly difficult for defense attorneys to be prepared for trial. We believe that real open file discovery would make the process more fair for defendants and make the criminal process much more reliable and efficient.

We are concerned that although only 9% of Arlington is African-American, black people represent nearly half of those charged with driving on a suspended license, and nearly 60% of those charged with marijuana possession in Arlington. Black people also represent over 60% of persons convicted in Arlington of obstruction of justice, trespassing, and larceny. We are further troubled that local stakeholders, including the Commonwealth's Attorney, refuse to acknowledge the reality of implicit bias and resist even entering a dialogue about race and policing. We believe that stakeholders must take more seriously the racial disparities in Arlington's justice system, and find ways to address them.

We are concerned that defendants in Arlington, unlike in neighboring jurisdictions, are often required to waive important statutory and constitutional rights, like the right to appeal, the right to a preliminary hearing, and the right to have arrest information expunged, in order to obtain the benefit of a plea bargain.

We are concerned that although Arlington has the potential to lead the way with respect to diversion programs for low-level offenders and people with substance abuse and mental health issues, these programs lack adequate support from key stakeholders. Too often, these programs include restrictive and punitive conditions that are inconsistent with evidence-based practices, limiting participation and making the programs themselves less effective.

We are concerned that local prosecutors continue to support the Virginia Association of Commonwealth's Attorneys in its efforts to obstruct and prevent meaningful and reasonable criminal justice reforms in the legislative and policy-making process.

Elected chief prosecutors are in many ways the most powerful individuals in any local system of justice. They control who gets charged with a crime, which laws to enforce, and in many circumstances can virtually dictate the outcome of a criminal case. For that reason, in Arlington County, the Commonwealth's Attorney is uniquely positioned to address the concerns mentioned above. In fact, forward-thinking prosecutors in Virginia and nationwide have already done so. We believe reforms are necessary in order to help Arlington County and the City of Falls Church move forward, better promote fairness and equality, and ultimately fix our broken justice system.

Regards,

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