

COMMONWEALTH'S ATTORNEY

CANDIDATE BRIEFING BOOK

ACLU
VA 50
YEARS

Dear Candidate:

Between 1980 and 2016, Virginia's prison population grew by more than 341%. By 2016, there were more than 120,000 people under correctional control in the Commonwealth. And, as these numbers grew exponentially, other data show that drug use contributed to the criminal conduct of 80% of people incarcerated. Yet, Virginia did not respond to this reality by strengthening and expanding mental health and substance abuse treatment programs and tackling failing systems like education, housing, and unemployment. Instead, police, prosecutors and politicians pushed so-called "tough-on-crime" policies that sought to jail our way out of these public health problems leading to overincarceration, particularly of the poor and people of color.

It doesn't have to be that way.

As a candidate for Commonwealth's Attorney, you are better positioned than any other public servant to usher in a new era of smart-on-crime policies. You have the opportunity and the "unparalleled power" to make and lead the case for changes in our criminal justice system as a key law enforcement official in your locality and in Virginia.

This briefing book, which will be freely available to any candidate or prospective candidate for Commonwealth's Attorney in Virginia, is designed to give you a better understanding of why it is important for Commonwealth's Attorneys to embrace the goals of reducing incarceration, eliminating racial disparities in our criminal justice system and bringing transparency and accountability to their offices. There is much that needs to be done to return fundamental fairness to our system, and much that you, as Commonwealth' Attorney, can do to help us achieve this goal.

As you'll see in the polling data reported in this briefing book, likely Virginia voters express strong support for prosecutors who support criminal justice reforms and work actively to reduce systemic racial bias and over incarceration.

Simply put, Virginia voters are eager for reform.

In recent history, almost three-quarters of Commonwealth's Attorney candidates were unchallenged, and voters were left in the dark about the policies they would pursue as prosecutors. The American Civil Liberties Union of Virginia is a non-partisan organization, and we do not endorse candidates. But we do believe people should vote, and that voters should be well-informed and know what Commonwealth's attorneys do and the important role they can play in reforming our criminal justice system.

Our aim is to educate and engage voters throughout Virginia about their power to elect a Commonwealth's Attorney in their city or county who embraces smart justice reforms. Our goal is to see that anyone who seeks the power of this constitutional office is challenged to persuade voters that they are committed to the pursuit of justice, not just convictions. We hope that you will respond positively to that challenge.

Very truly yours,

Claire G. Gastanaga
Executive Director, ACLU of Virginia

Why Smart Justice?

Our criminal justice system is flawed.

- More than **2.2 million*** people are in American jails and prisons
- Nearly **4.7 million** are on probation or parole
- Nearly **70 million** are living with a criminal record

Like most states, Virginia's prison population has exploded in recent decades.

- Between 1980 and 2016, the state's prison population grew by **341 percent**
- The state had **120,000** people under correctional control in 2016
- As of 2016, Virginia had the **11th largest** state prison population in the country.

Harsh sentences for drug and property charges are a primary driver of Virginia's massive prison population.

- **Eighty percent** of people in Virginia prisons have “a history of substance abuse that contributed to their criminality.”
- **Three out of five** people admitted to prison in 2014 were convicted of a drug or property offense.

* *The sources for the data cited in this briefing book can be found in the ACLU's [Blueprint for Smart Justice - Virginia](#).*

KAAMILYA'S STORY

Kaamilya is a 38-year-old African-American woman from the greater Washington, D.C. area who now lives in Northern Virginia. She has struggled with addiction to opioids for over 20 years. When she was employed, she worked minimum wage jobs without health benefits. She shoplifted to support her addiction, and had been convicted of misdemeanor larceny offenses several times. But because she was never arrested or convicted of a drug offense, she was not eligible for a diversion program and drug treatment was not included in her sentences.

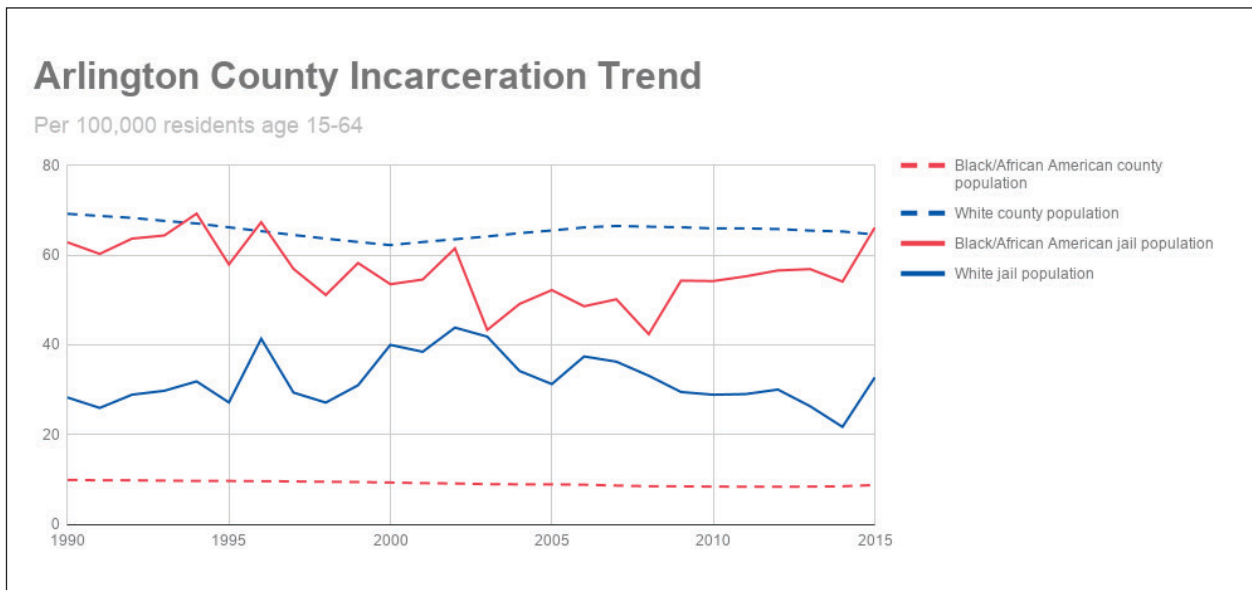
Kaamilya was most recently arrested for shoplifting about \$20 of merchandise from a pharmacy in Fairfax County—a toy for her five-year-old son and a few bottles of iced tea. Because she had two prior misdemeanor shoplifting convictions in that jurisdiction, the CA prosecuted her under the felony “three strikes” shoplifting statute. Kaamilya was sentenced to serve two years in state prison.

When Kaamilya asked for her sentence to include time at Guest House, a comprehensive, gender-responsive re-entry program for recently incarcerated women—the Judge refused her request.

“It was not even an option for him . . . My judge was like, “No, you are not getting off that easy. You are going to prison. I am going to make an example out of her.” Those were his exact words in the courtroom: “we’re going to make an example out of her.”

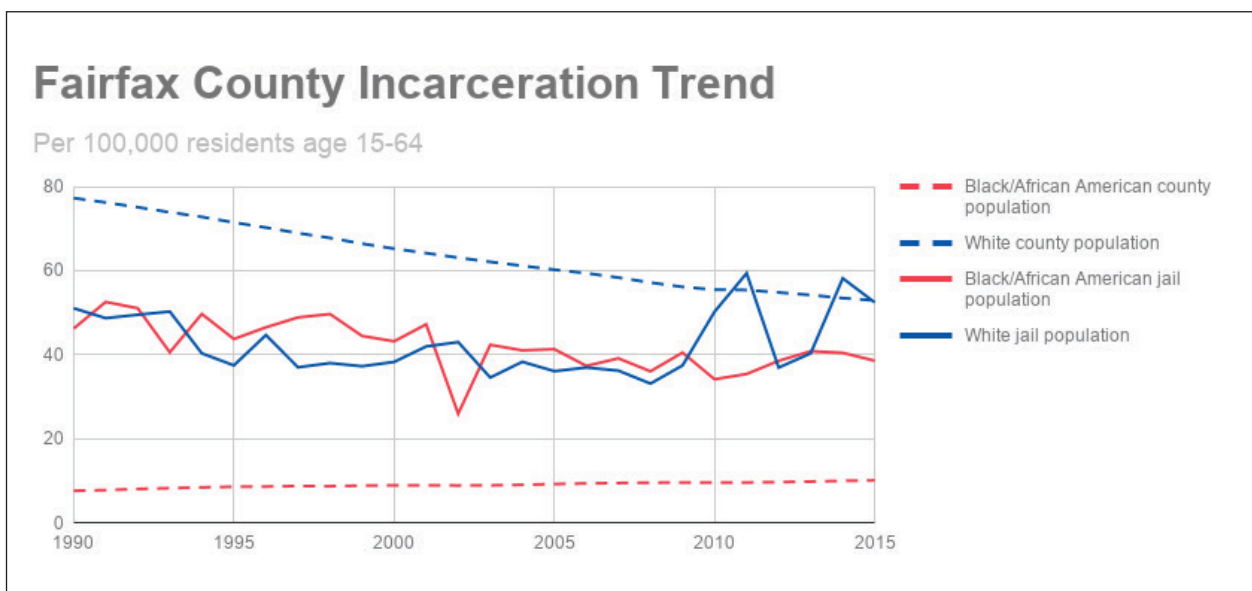
Racial injustice within the criminal justice system disproportionately impacts people of color, especially black people.

- While black adults were just 19 percent of the adult state population in 2015, they made up a staggering **57 percent** of Virginia’s imprisoned population.
- In Arlington County, African-Americans make up **66.1 percent** of jail population while only accounting for **8.8 percent** of county population (2015).



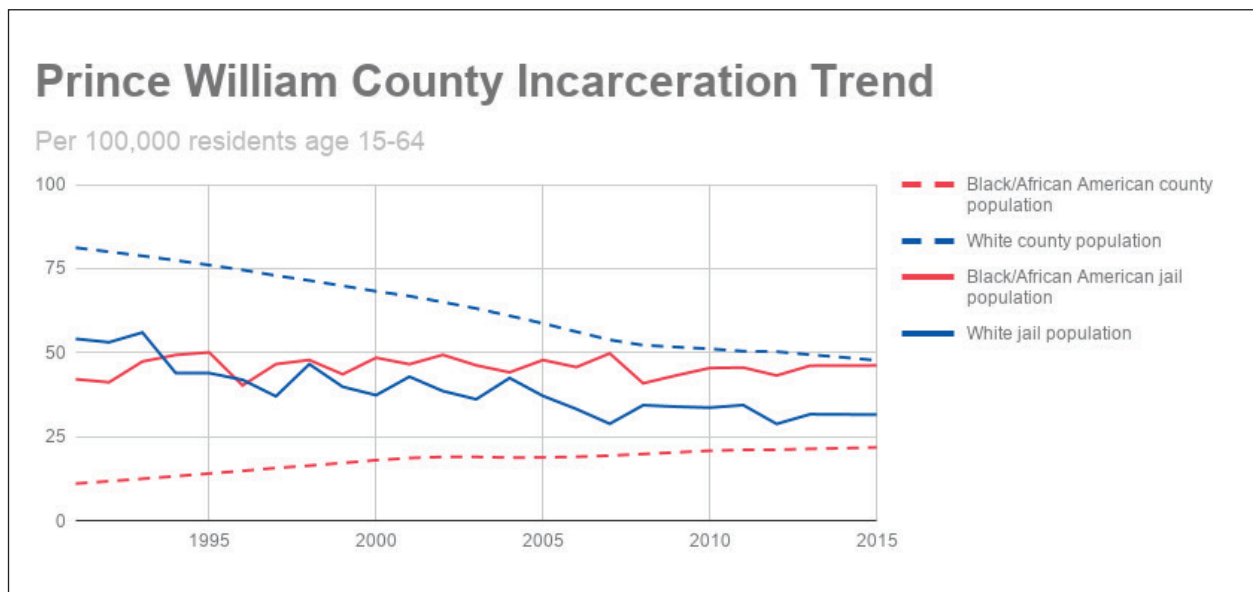
Source: Vera Institute of Justice, Incarceration Trends Data Tool

- In Fairfax County, African-Americans make up **38.6 percent** of jail population while only accounting for **10.1 percent** of county population (2015).



Source: Vera Institute of Justice, Incarceration Trends Data Tool

- In Prince William County, African-Americans make up **40.8 percent** of jail population while only accounting for **22.0 percent** of county population (2015).



Source: Vera Institute of Justice, Incarceration Trends Data Tool

Virginia should invest in more treatment programs for those struggling with drug addiction, which will give people the help they need while making our communities safer.

- Commonwealth’s Attorneys (CAs) should focus on getting people the help they need by allowing those arrested for drug possession or minor offenses due to addiction to get treatment, rather than incarcerating them. Resolving the addiction and mental health issues that contribute to criminal behavior would make communities safer than jailing everyone and releasing them into communities.

Instead of doubling down on outdated and overly punitive policies, CAs exert their power to reorient our state’s policies.

- CAs must embrace policies that will benefit our communities as a whole while actually making us safer and more productive.

40% of people in Virginia’s jails are addicted to drugs or mentally ill.

Why Focus on Commonwealth's Attorneys?

In the criminal justice system, a CA has far more power than any other public official.

These vast powers give CAs the ability to affect nearly every part of Virginia's criminal justice system. If CAs use their power to promote smarter

approaches to crimes, we could significantly improve our criminal justice system and reduce racial disparities within our prisons and jails while making our communities safer.

HOW CAs INFLUENCE THE CRIMINAL JUSTICE SYSTEM:

1. Prosecutorial discretion
2. Lobbying for and against changes to laws

Our Platform

Reduce incarceration:

- CAs must commit to reducing the number of people behind bars and significantly reducing racial disparities within the criminal justice system, including in arrests, prosecution, and sentencing.
- CAs must also recognize that public safety is best served by focusing on solving the problems that lead to crime rather than maximizing sentences after crimes have already occurred.
- Virginia can dramatically reduce its prison population by implementing just a few sensible reforms:
 - » Expand diversion programs that prioritize rehabilitation over punishment.
 - » Stop prosecuting low level marijuana possession and support decriminalization or legalization of marijuana possession
 - » Support raising the felony larceny threshold to \$1,500 or more so we can scale back the effects of over-criminalization. Until it is raised, CAs should prosecute theft as a misdemeanor for values less than \$1,500.
 - » Eliminate the use of cash bail within your office and pledge to recommend, for all legally permissible cases, presumptive release of defendants without a price tag.

“ Sending people with a history of drug dependency to jail only isolates the person and the problem but doesn't work to solve any of the underlying issues. Options like H.A.R.P exist, but only during incarceration. Why does someone like me have to go to jail to get help?”

— **Patsy Tucker**, formerly incarcerated, first woman graduate of Chesterfield County's Heroin Addiction Recovery Program (HARP)

Address racial disparities in the criminal justice system:

People of color in Virginia are overrepresented in the criminal justice system. CAs **must commit to ending racial disparities** in the system and in prosecutorial decision-making. This will require tracking and publishing statistics about decisions made within their offices and encouraging other CAs to do the same. It is only once we have data on these decisions that we can begin to understand and combat the existing systematic racial disparities.

CHANGE IS POSSIBLE

Aramis Ayala, Orange-Osceola, Florida
(State Attorney for the 9th Judicial Circuit Court of Florida)



Aramis Ayala – the first black state’s attorney in Florida history – is a local prosecutor with a bold reformist approach. As the prosecutor for the 9th Judicial Circuit Court of Florida, Ayala has committed to reform her office’s practices by reducing incarceration in her judicial district and addressing the racial disparities that exist in Florida’s criminal justice system and prosecutorial decision-making.

Since taking office, Ayala has publicly acknowledged that “[t]here are black and brown people who receive disparate treatment the way that the law is set up, period.” She intends to address these racial disparities by using her prosecutorial power to offer reasonable plea bargains to suspects, file lesser charges, and ask for more lenient sentencing to give people to give people a better chance at rehabilitation. Additionally, Ayala has announced that her office will no longer seek the death penalty in capital cases, a decision made in part due to the racially disparate application of the death sentence in Florida.

In Arlington County, black people are incarcerated at nearly **15 times** the rate of white people. In Fairfax and Prince William County, the rates are **3.8 times** and **2.2 times**, respectively.

INFORMATION THAT SHOULD BE TRACKED AND PUBLISHED INCLUDES:

- Charging decisions (including decisions not to prosecute)
- Bail recommendations
- Diversionary program placements
- Sentence recommendations, and
- Plea bargains.

Promote transparency and accountability:

- Too little information about prosecutors is made public. This lack of transparency prevents Virginians from knowing what decisions are being made or the outcomes of those decisions.
- Fully transparent practices and outcomes improve decision-making, allow the public to hold CAs accountable, and enable public understanding of the CA's role and job performance.
- In addition to publishing statistics about prosecutorial decisions, CAs should also pledge to publish all policies and protocols regarding prosecution guidelines, police-involved incidents, bail recommendations, fines and fees, diversion programs, plea bargains, civil asset forfeiture, and immigration considerations.

94%

of Virginia voters think that it's very important for a CA candidate to possess a commitment to transparency.

CHANGE IS POSSIBLE



Kim Foxx, Cook County, Illinois State's Attorney

Cook County state's attorney, Kim Foxx, is a local prosecutor with an eye on radically reforming the district's criminal justice system. Beating out her two-term-incumbent opponent, Anita Alvarez, for the office of state's attorney for Cook County, Illinois was a major victory; which Foxx primarily attributes to the reform-minded focus of her platform and campaign priorities.

To promote public accountability of her office, Foxx has doubled down on transparency by releasing key data about the types of cases the state's attorney's office prosecuted in the city and suburbs, defendant demographics, and data on sentencing and dispositions. Foxx insists that, "[t]he public has to hold feet to the fire on these issues." Foxx's efforts for transparency was well received by the community and Chicago-based advocacy organizations, which appreciated the release of a data report concerning criminal cases her office handled in 2016. Through these actions, Foxx has proven that she is undoubtedly committed to reforming the operation of the Cook County State's Attorney's office and she has increased the ability of the public to participate in that process. "You cannot look at the criminal justice system in a vacuum," Foxx explains. "We need a broader and more holistic view of how we prevent crime and how we keep communities safer."

Voters Support Our Platform

We asked voters in Virginia about smart justice in prosecutions and here's what we found.

Reduce incarceration:

- **NATIONWIDE:**
 - » **89 percent** of voters say it is very important for their prosecutor to prioritize decarceration by using alternatives to prison.
- **VIRGINIA:**
 - » **97 percent** of voters say they want a prosecutor who displays a commitment to seek justice, not just convictions.
 - » **92 percent** of voters agree that Virginia should invest in more rehabilitation and job training programs for people behind bars, so that those who have served their time can rejoin society and not return to crime.
 - » **71 percent** of voters support eliminating criminal penalties for the possession or use of small amounts of marijuana.
- **NORTHERN VIRGINIA:**
 - » **94 percent** of Northern Virginia voters say Virginia should invest in more rehabilitation and job training programs for people behind bars, so that those who have served their time can rejoin society and not return to crime.
 - » **92 percent** of Northern Virginia voters say Virginia should invest in youth programs to keep young people on the right track and out of jail or prison.
 - » **77 percent** of Northern Virginia voters support eliminating criminal penalties for the possession or use of small amounts of marijuana.



94% of Northern Virginia voters say Virginia should invest in more rehabilitation and job training programs for people behind bars, so that those who have served their time can rejoin society and not return to crime.

Address racial disparities in the criminal justice system:

- **NATIONWIDE:**

- » **88 percent** of voters are more likely to support a prosecutor candidate who believes in actively working to reduce unequal treatment by race in the criminal justice system.

- **VIRGINIA:**

- » **84 percent** of voters agree that Virginia CAs should work to change the criminal justice system so that people are not treated differently based on the color of their skin.
- » **91 percent** of voters agree that Virginia CAs should work to change the criminal justice system so that people are not treated differently based on how wealthy they are.

- **NORTHERN VIRGINIA:**

- » **70 percent** of Northern Virginia voters think that the criminal justice system in Virginia works differently for different people, with the most cited reason being “racial differences.”



70% of Northern Virginia voters think that the criminal justice system in Virginia works differently for different people, with the most cited reason being “racial differences.”

Promote transparency and accountability:

- **NATIONWIDE:**

- » **85 percent** of voters are much more likely to support a prosecutor who believes in making a prosecutors' decisions transparent by sharing data, information and policies with the public.

- **VIRGINIA:**

- » **92 percent** of voters find it concerning that CAs can withhold information about a criminal case from the defense, such as police reports, witness lists, and witness statements.
- » **94 percent** of voters think that a CA candidate should possess a commitment to transparency.

- **NORTHERN VIRGINIA:**

- » **86 percent** of Northern Virginia voters think that it's very important for a candidate to possess a commitment to prioritize rehabilitation over jail or prison.
- » **90 percent** of Northern Virginia voters think that it's very concerning that CAs have no direct oversight from the legislature or governor's office, meaning it is very difficult to fire a CA even if they act unethically.



90% of Northern Virginia voters think that it's very concerning that CAs have no direct oversight from the legislature or governor's office, meaning it is very difficult to fire a CA even if they act unethically.

8 THINGS WE BELIEVE A CA CAN AND SHOULD DO IN THEIR FIRST 100 DAYS

- **Require** a criminal conviction before forfeiture
- **Support** establishment and funding of a statewide investigative and prosecutorial unit to handle cases of police use of force resulting in death/serious injury
- **Stop** requesting cash bail
- **Decline** to prosecute simple marijuana possession and support decriminalization of marijuana
- **Support** diversion programs for people who need treatment for drug addiction instead of incarceration
- **Encourage** constitutional policing and put an end to stops and searches without probable cause
- **Support** the collection and publication of data by race, gender, national origin, LGBTQ on police stops, issuance of summonses, custodial arrests
- **Implement** collection and publication of data by race, gender, national origin, LGBTQ on prosecutions initiated, plea bargains entered into and terms, convictions and sentences imposed.

- Reduces racial disparities and basic due process issues.
- Reduces unwarranted use of force and ensures law enforcement accountability while protecting officers' rights.
- Addresses racial disparities and income inequality
- Helps reach decarceration goal by addressing vast racial disparities in enforcement of marijuana laws
- Helps reach decarceration goal by helping people with addiction problems get their lives back on track instead of punishing them
- Reduces racial disparities in the criminal justice system
- Increases transparency and promotes accountability
- Increases transparency and accountability of CA's office