

**FAIRFAX COUNTY**  
**OFFICE OF THE COMMONWEALTH'S ATTORNEY**

# **First Term Report**

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**2019 - 2023**



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## A Message from CA Steve Descano

**When I was elected in 2019, I promised Fairfax County residents that we would build a modern justice system:** one that keeps our community safe while promoting equality and fairness.



I'm tremendously proud of the progress we have made in just a few years. During my tenure, the Office of the Commonwealth's Attorney (OCA) has pursued justice in accordance with our community's values: taking serious crime seriously, while building a fairer system that promotes diversion and reduces mass incarceration. **As we've made significant progress toward this goal, Fairfax County remains the safest jurisdiction of its size anywhere in the country.**

We overhauled our office to take a more effective and just approach to prosecution that is directed at the root causes of crime. Over the last three years, we have:

- Dramatically **grown, restructured, and modernized** the Office of the Commonwealth's Attorney to better serve the community;
- Implemented **data-informed policies** that reflect our community's values and keep Fairfax residents safe;
- **Centered victims** in prosecution and prioritized **community engagement**;
- Launched new **diversion programs** to improve safety, address the root causes of crime, and reduce mass incarceration; and,
- **Collaborated** with members of the General Assembly to build a more fair and just system.

To ensure we prioritize the five areas mentioned above, my office uses *prosecutorial discretion* to focus prosecutors' finite resources on the cases that have the greatest impact on community safety. At the same time, our prosecutors strive to divert most non-violent, low-level offenders away from incarceration and find alternative pathways that address the root causes of crime, thus making our community safer.

A Message from CA Steve Descano

We've ushered in a new vision for our justice system, bringing us closer to the day when someone's race, wealth, or zip code doesn't dictate their fate. I look forward to continuing to work together to build a more just, fair, and safe Fairfax County.

Onward,

— Steve Descano, Commonwealth's Attorney for Fairfax County



## Meet Steve

Steve Descano was sworn in as the Commonwealth's Attorney for Fairfax County and the City of Fairfax in January 2020. He is a veteran, former federal prosecutor, husband, and father.

Since taking office, Steve has undertaken a reform agenda aimed at promoting community safety in a manner that mitigates racial and socioeconomic disparities and addresses the root causes of crime. Under his leadership, the Office of the Commonwealth's Attorney has stopped requesting cash bail, implemented a new sentencing policy to address mass incarceration, launched new diversion programs, and restructured the office to produce accountability around reforms, among other initiatives.

A West Point graduate, Steve served as a U.S. Army Aviation Officer before putting himself through law school and becoming a federal prosecutor. He served in the Obama Administration's Justice Department for six years, specializing in the prosecution of complex financial crimes.

After his work in the Justice Department, Steve was selected as the Fairfax County NAACP's first nominee to the County's Police Civilian Review Panel. He also worked to help families throughout the region as the Chief Operations Officer and General Counsel at Paragon Autism Services, a provider of Applied Behavior Analysis therapy for children with Autism.

Steve lives in Burke with his wife, Ryanne, and his daughter, Charlotte.

# Making the Office of the Commonwealth’s Attorney Work Better for All of Us

To improve safety outcomes and implement the aforementioned priorities, it is crucial to have a modern, functional Office of the Commonwealth’s Attorney (OCA) to serve the community.

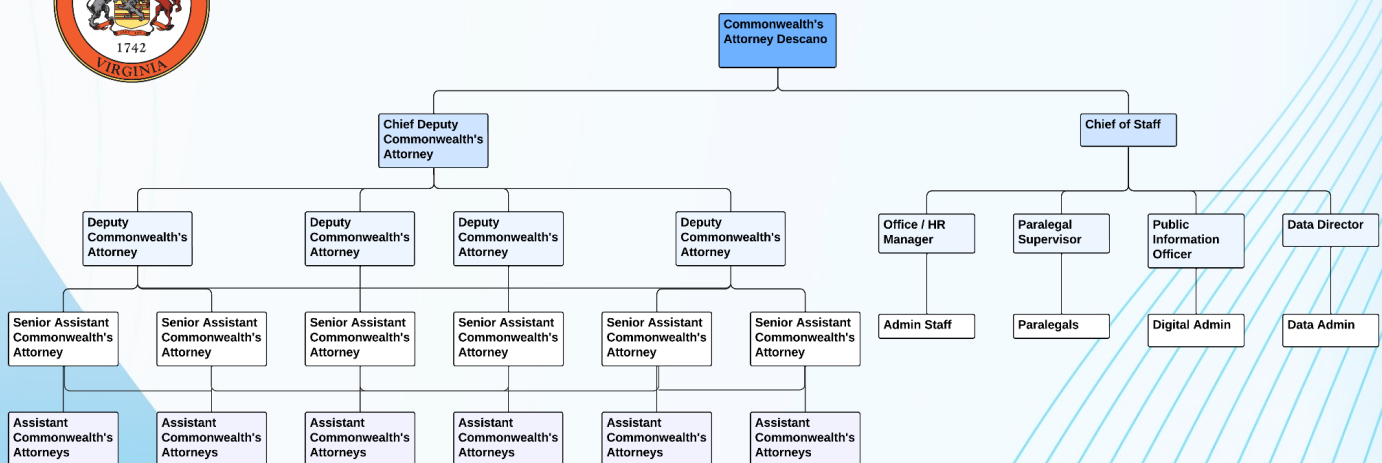
When I began as Commonwealth’s Attorney, the office had been under-resourced for half a century: boxes of paper were stacked to the ceiling, attorneys were drowning under caseloads, and there were no internal systems or support staff. We implemented the following operational reforms to address these challenges.

## About the OCA:

The Fairfax County Office of the Commonwealth’s Attorney serves the most populous jurisdiction of the Commonwealth of Virginia. Fairfax County has over 1.1 million residents and includes the municipalities of Fairfax, Herndon, and Vienna. Fairfax County has the highest caseload of any jurisdiction in the Commonwealth and is **one of the few populous counties that prosecutes all felonies and misdemeanors.**



Fairfax County Commonwealth's Attorney Organization Chart



The OCA currently has funding for 82 positions and is staffed by 5 Deputy Commonwealth’s Attorneys, 46 Assistant Commonwealth’s Attorneys (ACAs), 6 senior

support staff, 12 paralegals, and 12 administrative support staff. Though we have doubled the staff of the office over the last few years, prosecutors' offices that serve jurisdictions of this size are typically much larger and have 200-300 attorneys.

### **Doubling the Size of the Office:**

The first essential change we made was putting the office on the path to being adequately resourced. By doubling our staff, we ensured that we could handle our county's case volume and give our attorneys additional capacity to review evidence, meet their ethical obligations, and reach the right outcomes in each case.

I was proud to work with the Board of Supervisors to secure this additional funding, since the previous administration had tried and failed to do so multiple times. Jurisdictions our size often have 200-300 attorneys, but in 2020 Fairfax County was only budgeted 34; we spent less per capita on the prosecutor's office than any of the next 10 most populous Virginia counties. **With these extra resources, we have distinguished ourselves as one of the few prosecutor's offices in the Commonwealth who have the capacity to prosecute all misdemeanors.**

### **Adding Support for Attorneys:**

With the extra resources we secured from the county, we were able to build out multiple levels of administrative and managerial support for our attorneys:

- Our Deputy Commonwealth's Attorneys have a combined 80+ years of experience to **train and manage** line prosecutors.
- We created **specialized teams of attorneys** for high priority issues, including sex crimes and gun violence, to better support our most vulnerable victims.
- We improved communication with partner agencies by having a dedicated **Duty Attorney** available every day in the courthouse to answer questions about cases and a dedicated **Officer Liaison** who keeps in close touch with the Fairfax County Police on developing investigations.
- We built a support team from scratch and now have over **two dozen paralegals** and administrative staff who track and digitize every piece of case information.
- We implemented an **entirely digital case management system** to improve record-keeping and communication about cases.

## **Discovery Requests:**

Discovery orders govern the evidence prosecutors are required to turn over to the defense before trial.<sup>1</sup> Virginia's recent reforms to discovery rules underpin a foundational value of our justice system by ensuring defendants avoid a "trial by ambush," but they also create a substantial new obligation on our office.

Our paralegals collect, review, and prepare evidence for dozens of discovery orders a day for thousands of cases a year. As part of our commitment to justice, **we continue to turn over more evidence than is required** by the new law for cases in General District Court.

Fairfax County also recently mandated the use of police body-worn-cameras (BWC) – thousands of hours of new footage that can be an essential tool for justice, but must be diligently reviewed and distributed to defendants. Though we aren't perfect, we have taken great strides to give our prosecutors the resources, support staff, and systems to consistently meet comprehensive discovery requests for the first time in this office's history.

## **Response to COVID:**

During the height of the coronavirus pandemic, the OCA, with partners in Fairfax County, took steps to **reduce the jail population** and limit the number of people incarcerated in close quarters without compromising community safety. We implemented a policy of reviewing individuals serving a sentence in the county jail and assessed if they could be recommended for early release.

After the initial success of this policy with no negative impacts on community safety, my office expanded the review to include all the cases of everyone in jail at the time, as well as all pretrial decisions, and reevaluated on a case-by-case basis whether it still made sense to detain those who were being held during the worst of the pandemic.

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<sup>1</sup> Virginia updated its discovery rules in 2020, drastically increasing the amount of evidence prosecutors must provide to defendants and accelerating the time frame during which it must be provided.

The courts were also shut down completely for the first months of the pandemic, resulting in a **severe case backlog** that we are still working through. My staff have worked diligently to overcome the backlog of cases in the court system, while protecting defendants' Constitutional rights and keeping victims at the forefront of our work.



CA Descano meeting with the Korean American Association of the Greater Washington Area to discuss the OCA's priorities, gather input from leaders in the Korean American community, and affirm the office's commitment to counteracting discrimination and hate.

(July 7, 2021.)



## Mission, Vision, Values

Early into our tenure, I collaborated with our staff to create a mission, vision, and values statement to guide our office's work on behalf of the community. These commitments are displayed publicly across our office space to ground our team's service to Fairfax County.

### Mission Statement

Foster enduring community safety by consistently using our discretion to fairly pursue outcomes that meet the community's needs and accord with the community's values.

### Vision Statement

Lead a criminal justice system that fosters enduring community safety and eliminates disparities by treating all stakeholders fairly and with dignity, while using a variety of interventions, and through data-driven decisions.

### Values Statement

To promote our mission and realize our vision, we must have the courage to seek justice, fairness, and equity with integrity, compassion, and a thorough, trauma-informed approach to our work -- while being fully transparent to the community we serve.

# New Policies That Keep Our Community Safe & Make Our System More Just

When I ran for this office, I promised to focus on serious crime and divert low-level offenders from incarceration to address the root causes of crime. I'm proud that in my first term we have made progress toward [every single reform we promised the community](#), and Fairfax remains the safest county of its size in the country.

We have also built a state-of-the-art data program to drive the implementation of these policies.

**Ceasing Low-Level Marijuana Prosecution:** From my first day in office, I instructed prosecutors not to charge adults with simple possession of marijuana. This took up a disproportionate amount of prosecutors' time without any gains for community safety, and disproportionately impacted Black and brown Virginians.<sup>2</sup>

**Cracking Down on Gun Violence:** I have prioritized prosecuting gun crimes that occur in our community while advocating for tougher gun laws from the legislature.

- Fairfax is leading the Commonwealth in using **Substantial Risk Orders (SROs)** to temporarily take firearms out of the hands of people who may pose a threat to themselves or others.<sup>3</sup> Because SROs require rapid turnaround, we designated a special team of prosecutors to handle these critical orders – the first time the office has had a designated gun team.
- Preventing gun crimes is so important that I have also supported critical gun reform legislation in the General Assembly, including Virginia's Red Flag Law, which passed in 2020. I also collaborated with



CA Descano joins Chairman Jeff McKay, Safer Country's Paul Friedman, and Supervisor Rodney Lusk at the launch of an awareness campaign on how community members can file an SRO. (Sept 20, 2022.)

<sup>2</sup> Virginia legalized marijuana possession in 2021.

<sup>3</sup> SROs are civil orders that allow guns to be removed for up to 180 days from someone who presents a risk to themselves or others. Emergency Substantial Risk Orders (ESROs) allow guns to be removed for 14 days without a court hearing.

Sen. Adam Ebbin to draft a bill banning guns that have had their serial numbers removed.

**Eliminating Requests for Cash Bail:** One of the most significant reforms my office has implemented is a no-cash bail policy. Instead, our prosecutors recommend that someone be detained or released pretrial based only on dangerousness.

Cash bail doesn't keep our community safe: granting cash bail for a person who represents a danger to the community gives that person a mechanism to return to the community, while a person who doesn't represent a danger to community faces a financial barrier to their release. Additional time in jail can lead to the loss of a job, housing, or other negative collateral consequences, increasing the odds that an individual will engage in crime in the future. Our twin goals of community safety and justice are not served by the negative consequences of detaining someone pretrial due to poverty or allowing a dangerous person to pay their way.

**Reducing Mass Incarceration:** Our updated sentencing and plea-bargaining guidelines instruct prosecutors to, where appropriate, **not seek mandatory minimums, reduce non-violent felonies to misdemeanor charges, and consider alternative sentencing or diversion programs.** Prosecutors do not charge felonies where misdemeanors are sufficient or charge misdemeanors where a dismissal or diversion is more appropriate.

These policies have helped render Fairfax's prison population the third-smallest in Virginia (per 100k residents), all while it remains the safest jurisdiction of its size in the country.

**Holding Government Accountable:** As the elected leader of the Fairfax County justice system, my office is responsible for enforcing accountability to keep the community safe and maintain public trust in the justice system. That includes playing an oversight

***Did you know? Felony charges*** have serious secondary consequences that can far outweigh the crime committed. In less serious cases, a felony conviction can create unnecessary hurdles for people pursuing education and employment or finding appropriate housing – creating the kind of instability in a person's life that can lead to more crime. Unnecessary felony records create a vicious cycle of decreased opportunity, increased poverty, and increased crime that becomes the dominant force in communities where the cycle takes hold. Because the cycle disproportionately affects people of color and people without wealth, over-criminalization also drives wealth inequality and the racial opportunity gap.

role to hold law enforcement accountable if criminal activity has occurred – the kind of oversight that hasn't always happened in the past.

In 2019, Fairfax Police began investigating an officer for misconduct including stealing drugs from the police property room, planting drugs on innocent people, and stopping motorists without a legal basis.<sup>4</sup> When my office learned of the investigation, we initiated the process to vacate criminal convictions based on this officer's testimony.

*This included former DC firefighter Elon Wilson, the only person who was still incarcerated based on the officer's testimony. Wilson had been just 23 when he was wrongfully arrested by the officer after a traffic stop. He was threatened with 10 years in prison for the charges and — with a newborn at home — pled guilty to achieve a shorter sentence. He was two years into this sentence before my office was able to help overturn his wrongful conviction.*

**Responding Directly to Homicides:** To better assist our law enforcement partners, I established a new policy of responding directly to homicide scenes in the county along with one of my Deputy Commonwealth's Attorneys. This in-person, real-time connection at the crime scene has improved evidence gathering and decision making that is critical to building a successful case.

**Reporting on Use of Force, Vehicle Stops, and Improper Conduct and Discrimination:** Reviewing video evidence is a key part of the oversight role of the office. We've implemented new guidelines to instruct prosecutors on how to identify incidents that may be discovered when reviewing body-worn or in-car camera footage and how to report concerning incidents for investigation.



<sup>4</sup> [Fairfax prosecutors are looking to undo more than 400 convictions involving officer Jonathan Freitag - The Washington Post, 4/16/21.](#)

**Refusing to Cooperate with ICE on Civil Deportation:** To improve community safety, promote confidentiality, and restore trust, employees of the OCA do not cooperate with ICE on civil deportation matters. (This doesn't impact our cooperation with federal, state, or local agencies in connection to any action intended for a legitimate law enforcement purpose.)

When local law enforcement assists with civil immigration enforcement, trust and cooperation diminish, and immigrant community members become less likely to report crimes, act as witnesses in criminal investigations and prosecutions, and provide intelligence to law enforcement.

**Protecting Women's Reproductive Rights:** When the United States Supreme Court stunned the nation in June 2022 by overturning *Roe v. Wade*, the long-standing precedent that protected a woman's right to seek an abortion, [I stood up and promised Fairfax County](#) that my office will never prosecute a woman for making her own healthcare decisions nor prosecute anyone who assists a woman obtain an abortion.<sup>5</sup>

**Eliminating the Death Penalty:** Since taking office, no prosecutors in my office have pursued the death penalty for any offenses. Decades of data show that the death penalty does not deter crime, is racially discriminatory, and often retraumatizes victims through its lengthy appeal process. Following our lead, Virginia abolished capital punishment in 2021, the first southern state to do so.

**Removing Barriers to Expungement:** In 2023, my office worked with Circuit Court clerks and judges to remove bureaucratic barriers to the expungement process and make it easier for people to get their clean slate. Now, eligible individuals who petition the court for an expungement are no longer required to come to a pro-forma court hearing, saving time and legal fees.<sup>6</sup>



<sup>5</sup> [Opinion | My Governor Can Pass Bad Abortion Laws. But I Won't Enforce Them. - The New York Times \(nytimes.com\)](#), 5/31/22.

<sup>6</sup> [Virginia's major expungement reform will go into effect statewide in 2025\).](#)

## A Data-Driven Office

One of my biggest priorities is running a transparent and data-informed office. We are proud to have implemented reform policies that reflect community values, but our policies are meaningless if not enforced.

**That's why we use data in real time** to improve day-to-day decision making and ensure that every prosecutor's actions reflect office policy.

Early in my tenure, we implemented a new policy that requires all prosecutors on the team to stop requesting cash bail and make pre-trial detention recommendations based only on whether a defendant represents a danger to the community, not their wealth.

In October 2022, our office released its [Bond Data Dashboard](#), which provides initial insights on the impact of this policy. The initial data, and our January 2023 update, confirms that prosecutors are asking for defendants to be held pre-trial in the vast majority of violent/sex-related offenses, and asking to release most defendants charged with non-violent, lower-level offenses.

We will publish updated data regularly to remain transparent to the community, while also ensuring adherence to our policy. And we look forward to developing more such data dashboards across all key decision-making points that involve our prosecutors.



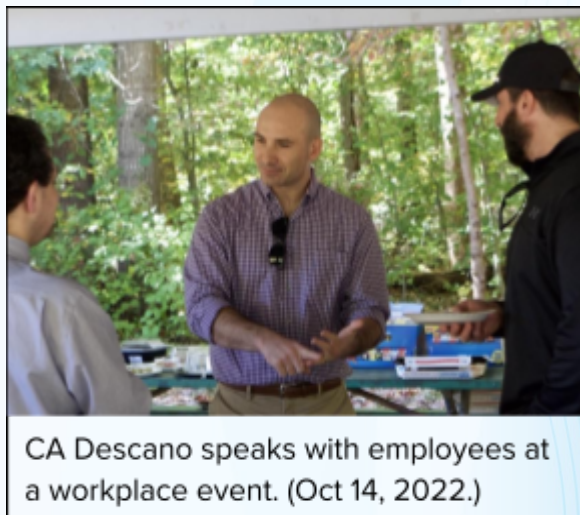
“Over the next few years, we hope to have this level of data for the major decision-making points our attorneys engage in. Only by drilling down can we hold ourselves accountable to the policies set out by the office, and work to eliminate racial and other disparities at every point in the system.”

– Jaime Michel, Data Director

## Centering Victims and the Community

When I came into office, I also found that outcomes for victims had been historically lacking. I've since used the tools at my disposal — both in Fairfax and by working with members of the General Assembly — to improve victims' experiences throughout the court process.

**Increasing Support in the OCA:** We've implemented procedural changes to help support victims throughout their cases. We connect victims to prosecutors earlier and have created a specialized team of attorneys that work predominantly on sex and domestic violence cases. This streamlines information flow and helps victims and families, who are supported by more experienced prosecutors to help them navigate the justice system.



CA Descano speaks with employees at a workplace event. (Oct 14, 2022.)

Our prosecutors also do their best to balance victims' wishes with community interest in resolving a case. Data shows that victims usually prioritize not being retraumatized as they seek justice, and may prefer accountability mechanisms other than the maximum available prison time.<sup>7</sup> It is critical that our team weighs victims' priorities without any preconceived notions when determining how to proceed with a case.

**Vertical Prosecution:** We implemented a new practice of assigning felony cases via vertical prosecution, in which one prosecutor follows a case from start to finish whenever possible. This consistency helps victims and witnesses, who have increased support in the process, and results in better outcomes, since prosecutors are more familiar with the case and evidence.

**Trauma-Informed Practices for Child Victims:** One of the greatest responsibilities in the OCA is working with children who have been victims of crime. Our prosecutors seek justice for them and their families while trying to minimize the trauma that can be caused while going through the court system.

<sup>7</sup> [Alliance-for-Safety-and-Justice-Crime-Survivors-Speak-September-2022.pdf \(allianceforsafetyandjustice.org\)](#), 9/1/22.

One way we've done this is to make it easier for child victims to be able to testify live via closed-circuit television (CCTV). My team fought for this accommodation — the first time it had ever been used in Fairfax County — in one especially egregious case, and we were able to win a conviction and a measure of justice for the victim. Because the statute was so narrow, I was motivated to try to change the law to make it easier for future child victims. This year, the General Assembly passed [HB 2129](#), making it easier for child victims to testify during trial via CCTV, instead of having to be retraumatized by facing their alleged abuser directly in a courtroom. [Del. Karrie Delaney and I cowrote this bill](#) to bring Virginia's statute in line with other states across the country.<sup>8</sup>

We have also made strides for child victims on the merits of our legal arguments. At the end of 2022, the Virginia Court of Appeals issued an opinion in a case in which we had previously won a conviction, which permits certain hearsay evidence to be admitted at trial where a victim is unable to testify.<sup>9</sup> This opinion further helps child victims, some of whom may be too young or traumatized to be able to testify, by ensuring that other accounts they give can still be heard in court.

**Calling for a Victim Protection Program:** I partnered with my colleague Ramin Fatehi to advocate for [fully funding Virginia's Witness Protection Program](#), which exists on paper only.<sup>10</sup> We need to ensure that people who have already been victimized are not further harmed or intimidated if they choose to cooperate with prosecution.

**Responding Directly to Homicides:** My office also implemented a new policy of responding directly to all homicide scenes in the county. This earlier connection with law enforcement improves the information flow throughout the case.

## Justice Advisory Council

For too long, community members have not trusted the prosecutor's office or the broader justice system, often meeting a prosecutor for the first time in a courtroom. We cannot fulfill our mission of keeping the community safe without community trust, and I am committed to making sure that my office and policies reflect the values of our community.

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<sup>8</sup> [Column: Virginia needs a trauma-informed justice system \(richmond.com\)](#), 1/24/23.

<sup>9</sup> [Virginia appeals court sides with Fairfax County on new hearsay evidence exception - WTOP News](#), 12/7/22.

<sup>10</sup> [Opinion: Fund the Virginia Witness Protection Program - The Virginian-Pilot \(pilotonline.com\)](#), 3/30/21.



- To start, we have designated a senior staff member to focus on community engagement. Our Public Information Officer (PIO), Laura Birnbaum, is the point of contact for community events, initiatives, and feedback.
- My office also created a Justice Advisory Council to serve as a vital two-way street between the office and the community. Its mission is to educate the community about what is happening in local courtrooms, strengthen the relationship between the office and marginalized segments of the community, and urge stakeholders to find ways to improve the system. We also use the JAC to lift up community concerns that we then address in our operations.

The JAC was formed in 2021 and applications were opened to the entire community. Currently, there are 20+ members of the JAC who represent every supervisor district in Fairfax County and include lawyers, law enforcement, students, parents, nonprofit executives, and much more.

## Community Partnership Grant Program

In 2022, we announced a first-of-its-kind **Community Partnership Grant Program**, available to Fairfax-based non-profit organizations that provide services to support child crime victims, sexual abuse victims, and domestic violence victims.

We distributed grants of \$8,000 to SafeSpot, Women for Afghan Refugees, and United Community's Progreso Center. We aim to maintain the grant opportunity as an annual program.



"As the leading human services non-profit agency in southeastern Fairfax County, United Community seeks out opportunities to collaborate with our allies throughout the community. We're grateful to Commonwealth's Attorney Descano and his office for this grant, which will dramatically help us improve our reach and services to immigrants who are survivors of domestic violence."

- Alison DeCoursey, United Community President and CEO

CA Descano at United Community's Progreso Center (Dec 5, 2022.)

# A Holistic View of Community Safety: Alternatives to Incarceration

**My promise to improve justice and safety in Fairfax County depends heavily on diverting low-risk individuals from the criminal justice system.** To meet the demand for diversion options, we built entirely new programs and expanded existing ones.

The OCA oversees the following diversion programs and specialty dockets as alternative pathways to provide accountability and rehabilitation for people charged with specific non-violent crimes. By treating the root causes of criminal behavior, these individuals are less likely to recidivate in the future, helping to improve community safety and individual lives.

## Diverting Individuals from Incarceration

### **Deferred Dispositions**

In 2020, I helped write the bill that established Virginia Code 298.02, which is one of the main tools our office uses to get harm-reducing outcomes. All of our diversion programs operate under this code section.

How It Works: When the prosecution and defense agree to a 298.02 deferred disposition, we “defer” a finding of guilt until after the individual has an opportunity to meet certain conditions meant to improve community safety (e.g., probation, restitution to victims, anger management classes). If the conditions are met, the charges are reduced or dismissed; if not met, the guilty plea is entered, and the person is convicted. Charges that are dismissed under a 298.02 deferral are eligible to be expunged from an individual’s record, giving them a true second chance.



We created the role of **Diversion Coordinator** specifically to coordinate across all of our diversion options internally.

“One of the joys of building new diversion programs is that we get to provide different resources for individuals with different needs, helping to get at the root causes of criminal behavior and reduce the likelihood of future crime.”

- Mayo Wilson, Diversion Coordinator

Why It Matters: Deferred dispositions are one of the best tools prosecutors have for helping get at the root causes of crime, since they give the defendant a legitimate, customizable chance to address the causes of their behavior without sacrificing any chance of accountability.

### **Trespassing Deferral and Dismissal**

In 2021, our office launched a pilot program to fill a gap for low-risk individuals charged with trespassing. The goal of this program is to target high-need individuals, mostly people experiencing homelessness, who have chronic drug or mental health issues and would not be served by incarceration.

Individuals who have trespassing as their sole charge have the opportunity to complete mental health or substance abuse treatment in exchange for having their charges dismissed and immediately made expungeable.

### **Taking Root**

In April 2022, we launched Taking Root, an unprecedentedly expansive diversion program run out of our office and conducted in partnership with Opportunities Alternatives Resolutions (OAR), a Fairfax-based nonprofit.<sup>11</sup>

To be recommended for Taking Root, individuals charged with non-violent offenses must have an underlying issue that has led to their criminal involvement. Participants receive an individualized treatment course that can include case management, mental health treatment, substance abuse treatment, job and education referrals, affordable housing and more; and those who successfully complete the program can have their cases dismissed.

### **Restorative Justice Pilot**

We also launched a new restorative justice pilot for young adults. Restorative justice is a victim-centered program in which the offender personally accounts for the harm that has been caused and the parties identify a path to healing for the victim outside of a

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<sup>11</sup> [New Fairfax Program Focuses On Services Instead Of Prosecution | DCist](#), 4/6/22.

traditional jail sentence. Existing programs show high rates of victim satisfaction and significant success in reducing future crime.

This pilot program will serve first-time offenders between the ages of 18 and 26 who have been charged with low-level offenses and will be operated through a partnership with NVMS Conflict Resolution Center.

## Expanding Use of Existing Treatment Dockets

In our attempt to divert as many people as possible and address underlying causes of crime, our office also makes unprecedentedly active use of Fairfax County's three specialty dockets, which each address certain issues that often intersect with the criminal justice system. These courts are not adversarial like the regular court system, but are collaborative spaces where prosecutors, defense, and a judge are all on the same side to provide defendants the help they need.

OCA staff attorneys play a vital role in the success of the dockets by working closely with court staff and participants to ensure successful outcomes.

**Drug Treatment Court:** Many jurisdictions have a drug court, but few use it as effectively as Fairfax County. Drug Court enhances public safety through cost-effective, research-based interventions that prioritize rehabilitation over incarceration. Instead of going to jail, participants go through a 14–24-month program of treatment and intense court supervision; if successfully completed, their non-violent felonies are dismissed.

Previously, individuals with minor possession charges could be sent to Drug Court, but my office reserves all the spots for those with extremely serious substance abuse issues, prioritizing people who might die if they don't get the treatment they need. To further incentivize participation, we made a significant policy change that opens Drug Court to participants pre-conviction. Since they do not have to have first been convicted to be eligible for treatment, participants can therefore avoid the collateral consequences attached to a criminal record if they graduate the program.

**Veterans Treatment Court:** The Veterans Treatment Docket similarly provides treatment and supervision to justice-involved veterans, with a goal of returning veterans to the community and reducing recidivism. Our office is committed to helping those individuals who sacrificed for us, and, as a veteran, I'm personally deeply committed to a program that serves veterans with PTSD, mental health issues, and/or substance abuse issues.

**Mental Health Court:** The Mental Health Docket is aimed at addressing mental health and co-occurring substance abuse issues amongst defendants at various stages in the criminal justice system. Since first created in 2018, over 150 individuals have been connected with services through this docket



CA Descano at the first ever graduation of Drug Court. (Sept. 24, 2020.)

## Making an Impact in the General Assembly

While my priority is implementing OCA policies that reflect our community's values, I also know that part of serving as the elected Commonwealth's Attorney includes sharing my experience of the criminal justice system with members of the General Assembly. Not all lawmakers have backgrounds in criminal law, and they depend on expertise from other elected officials in the state to help draft and advocate for legislation. This input has historically been provided by VACA (Virginia Associate of Commonwealth's Attorneys), which has a more traditional approach to prosecution.

In the last three years, I've pushed key pieces of legislation to fully deliver the changes that residents of Fairfax have called for and ensure that we have the tools we need to build a fair and just system.

### **Giving Us More Tools to Prosecute Gun Violence**

- Red Flag Laws ([2020](#)) give law enforcement the ability to remove guns rapidly from someone who might be a danger to themselves or others.
- *Banning serial number scratch off guns*<sup>12</sup> ([2022](#)) would prohibit individuals from carrying guns without serial numbers.
- *Banning ghost guns* ([2023](#)) would prohibit individuals from being able to buy untraceable guns from manufacturers.

### **Making the Justice System Fairer and Reducing Mass Incarceration**

- Deferred dispositions ([2020](#)) are a significant tool that enables our office to divert many individuals under the new code section 298.02. I helped write this bill with Sen. Scott Surovell.
- Expungement reform ([2021](#)) will make more people eligible for record sealing.
- Jury sentencing reform ([2021](#)) allows individuals who are convicted in a jury trial to opt to have a judge impose their sentence. Due to a Virginia-specific sentencing law that removes discretion, jury sentences are often much harsher than judicial sentences. Before this reform was enacted, many individuals forfeited their constitutional right to a jury trial to avoid being sentenced by a jury if convicted.
- *Ending mandatory minimums* ([2022](#)) would further reduce mass incarceration and allow judges, who know most about the case, to retain discretion in sentencing.

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<sup>12</sup> Italicized bills have not yet passed.

- *15-month study to reform how prosecutors' offices are funded* ([2021](#)) would prevent prosecutors from having budget incentives drive their case decisions.

## **Protecting Victims**

- Banning the gay/trans “panic” defense ([2021](#)) prevents defendants who kill, wound, or assault LGBTQ victims from using the victim’s sexual orientation or gender identity as a defense.
- Allowing CCTV testimony for more child victims ([2023](#)) prevents some children from being retraumatized by having to testify in the same room as their alleged abuser. I personally cowrote this bill with Del. Karrie Delaney, a former victims’ rights advocate.
- [Funding Virginia’s witness protection program](#) would protect victims and witnesses who are reluctant to participate in prosecution due to threats or intimidation.

## **Ensuring Police Accountability**

- Banning no-knock warrants ([2020](#)) requires police announce themselves when delivering search warrants.
- Penalties for excessive use of force ([2020](#)) subject law enforcement officers to disciplinary action in such instances.
- Ending pretextual traffic stops ([2020](#)), which are a major contributor to disparate treatment by the justice system.

And some reforms that we made in Fairfax County in early in 2020 were soon enacted by the General Assembly:

- Our office stopped asking for the **death penalty**; [Virginia soon eliminated it](#) in 2021, the first southern state to do so.
- Our office stopped prosecuting **low-level marijuana possession**; in 2021 Virginia [legalized possession](#) of up to one ounce of cannabis for adults -- further proof of the public consensus that possession of marijuana for personal use in a non-public location does not increase crime.
- I directed prosecutors to use misdemeanor charges for larceny theft under \$1500. [Virginia later raised the felony larceny threshold to \\$1000](#), which is still lower than many states.

- I also stopped the policy of charging **third-strike larcenies**, which turn a misdemeanor petty larceny into a felony. [Virginia repealed this statute](#) in 2021, so that there are no more “third-strike felonies” and every larceny charge is dependent on the seriousness of the crime.



The OCA hosted Professor Kristin Henning of Georgetown Law School for a training on implicit bias. (July 17, 2021.)



## Closing Remarks from CA Descano: Why Our Work Matters

When I was elected, I set out to build a different kind of prosecutor's office: one that would keep the community safe and create a more just system for all Fairfax residents. We've made tremendous progress towards that goal, but there's still plenty of work to be done.

Over the last few years, we've made substantial improvements to the core functions and structure of the office that will set us on the path to long-term change:

- The OCA didn't have the necessary resources to operate ethically, so I worked with the Board of Supervisors and received funds to double our size, digitize court records, and **bring the office into the 21<sup>st</sup> century**.
- The County wasn't making sufficient use of **diversion programs** and steering people off the path of criminal behavior, so we built new ones and reformed the existing options to maximize their impact.
- Office policies didn't prioritize long-term safety and fairness, so we implemented **new policies** and **built data systems** to hold ourselves accountable to those reforms.
- We restructured our team to focus specifically on **centering victims** and engaging with the community.
- And I've been an active collaborator with members of the General Assembly to give our prosecutors the tools they need to keep our community safe.

**Our work over the last three years has underscored that safety and justice go hand in hand, and that universally punitive policies do not universally make the community safer.** In fact, Fairfax County remains the safest jurisdiction of our size anywhere in the country.

Thank you for giving me the opportunity to lead Fairfax County's criminal justice system and for taking the time to read this report. I hope that by seeing some of the changes we've made in just the last few years, you can see how much closer we are to the day when we will truly have a fair and just system.

— Steve Descano, Commonwealth's Attorney for Fairfax County

