

"The Commonwealth's Attorney Has a Very Holistic Role": An interview with Virginia Candidate Parisa Dehghani-Tafti

Parisa Dehghani-Tafti, a candidate for prosecutor, explains how she wants to fight mass incarceration in Arlington.

Daniel Nishanian | February 22, 2019

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Update (June 6, 2019): [Read our preview](#) of this election.

Arlington County and Falls Church City, in Northern Virginia, are voting for their prosecutor this year. Theo Stamos, the incumbent commonwealth's attorney who has drawn criticism from proponents of criminal justice reform on such matters as **bail** and **voting rights restoration**, faces a challenge from Parisa Dehghani-Tafti, the legal director of the Mid-Atlantic Innocence Project and a former public defender. The two will face off June 11 in the Democratic primary.

The Political Report talked to Dehghani-Tafti this week about the goals she has in mind when promising to "dismantle mass incarceration," about the role she thinks prosecutors and their state association (the Virginia Association of Commonwealth's Attorneys) play in mass incarceration, and about the reforms she is proposing on youth justice, bail reform, discovery, and other issues. The interview has been condensed and lightly edited for clarity.

You launched your candidacy by calling for reform, and in your announcement, you wrote that you "want to dismantle the mass incarceration machine." What do you think are the drivers of mass incarceration in Virginia, and what aspects of Arlington's criminal justice system do you believe must be overhauled in priority?

I think the drivers of mass incarceration in Virginia are not that different from around the nation. I think it's a combination of criminalizing nuisance behavior, really intensive focus on drug prosecution, a very low felony larceny threshold (in fact Virginia is one of the lowest in the entire country), and pretty harsh sentences, or a harsh way in which prosecutors charge and overlap charges in order to have a harsher sentencing scheme. In Arlington, we focus a lot on things like simple marijuana possession. In the span of five years, for a jurisdiction that has about 250,000 people, we prosecuted more than 2,700 simple marijuana prosecution cases.



Parisa Dehghani-Tafti

Why do you think the position of commonwealth's attorney is a good place from which to change this situation? Theo Stamos, the incumbent, reacted to your candidacy by stating, "If she wants to decriminalize marijuana, she should go to Richmond." So what makes this a relevant office from which to fight mass incarceration?

Prosecutors are the head law enforcement, or public safety official, within the court system. And they're the ones who ultimately decide what the priorities are in terms of what gets prosecuted, what the priorities are in terms of what amounts of the community engagement they have. Most offices like the Arlington office are not transparent about who they are prosecuting, what kind of crime they're prosecuting for, who is getting diversions, what the socioeconomic backgrounds of the victim's are, as well as the defendants. They're content to keep all of that in a black box. Prosecutors are content with the public not really knowing what they do on a day to day basis, because maybe if people knew they wouldn't get reelected.

They're saying, 'All I do is enforce the law, I don't make it, and if you want reform go to your legislature.' Yet when it comes time to reform, when legislators propose bills — just today with the bill that would prosecute the execution of the seriously mentally ill, last week there was a bill that would permit people who are innocent but convicted on unreliable science to get



Commonwealth's Attorney is down in Richmond every single day of session, and opposes reform after reform after reform, and these bills get killed.

This is a shell game of prosecutors saying, 'we have no discretion, we just follow the law,' and then turning around and making sure that none of their tools are taken away from them.

That gets to a question I had on the Virginia Association of Commonwealth's Attorneys, which, as you just said, lobbies for or against certain changes in Richmond. You mentioned their opposition to bills to decriminalize small amounts of marijuana, or they're now calling for a bill to expand prosecutors' ability to file murder charges in the aftermath of a drug overdose. So how would describe the attitude that you would have toward the association if you were elected, in terms of your involvement and membership in it?

When I'm elected, I'll have to see. I'm hoping that I'll be elected with a wave of other reform prosecutors—there are six of us up for election this year. I think if there is a way to transform the association, I would like to be a part of that. If there's not, right now they don't speak for me.

The new executive director, I believe his priority is to pass the homicide law that you were just talking about, and I don't think that's going to stop people from overdosing. I think what it's going to do is that it's going to cause more deaths because people are going to be afraid to call in overdoses. That doesn't keep us safer. I think that law is designed as part of the toolkit that prosecutors want, a laundry list of capital offenses, lots of low-level drug crimes, low felony thresholds: These kinds of laws give them enormous power to compel guilty pleas and raise their conviction rates. But I can't under the best of circumstances imagine a way in which preventing someone from calling in a drug overdose makes us safer.

Are you concerned that a prosecutor's job makes it inherently constraining for someone who is interested in overhauling the system? In December, the Harvard Law Review published a note that stated, "Tweaking the criminal legal system by introducing nontraditional prosecution methods ignores the fundamental truth that this system was never intended to keep marginalized people safe." How do you think about, or how would you respond to, this criticism that reforming the system from the inside risks not going far enough?

I think it's a legitimate concern, but I think that working on the system from the outside also has its drawbacks. I have been working on creating a fairer and more just and more accurate justice system from the outside for almost 20 years. The thing that drove me to try to effect change from the inside is the parable where the villagers start to see babies coming down the river, and they're plucking the babies out of the river, and then one person starts walking upstream, and everybody says why are you walking upstream, help us get the babies out of river, and the individual says, 'Well, I'm going to see who is throwing them in.' I'm not a naive idealist, I understand that people do bad things, and there needs to be appropriate punishment, and we need to create communities safe. But I think at the end of the day, we need to try to effect change from the inside. The data that we have from organizations like the center for Fair and Just Prosecution shows that these reforms can work. I don't think we'll ever have a perfect system, but right now I think going in on the inside and trying to reform based on evidence and based on data is about the only choice we have.

You currently work at the Mid-Atlantic Innocence Project, which looks to build legal cases that establish the innocence of people who have already been convicted. And in the past you have worked as a public defender. How would your past work influence how you would approach the position of commonwealth's attorney?

The seam that's run through my work has always been truth, and accuracy, and fairness. What I do now is I look at cases, and we investigate sometimes 10, 20, 30, 40 year-old cases, and in order to prove somebody innocent what you really need to do is reinvestigate the case from scratch, you have to be able to talk to witnesses and convince them to talk to you, you have to know where to investigate and where to find record and documents, and then you have to affirmatively prove innocence. And you have to coordinate with all stakeholders in order to get anything done, including prosecutors. I think what it gives me is a collaborative perspective on being a prosecutor. I know how to build a case, and I know what needs to be proven in order to get to a point of prosecuting somebody, and it gives me a critical eye on things like forensic sciences and the other things that cause wrongful convictions, while at the same time maintaining my empathy for all of the parties involved including the victims and the survivors.

Would you implement new policies as prosecutor toward existing convictions: either to review possibly tainted cases for innocence, or, besides innocence claims, to retroactively review lengthy sentences that people have received that you deem to be excessive? Is there room to push further on either fronts in the office?

The first thing I would like to do in the office is forward-looking. It's to invite some of the organizations that do data-analysis to come in and look at what the office has been doing, and to collect data, and to share the data with the community so that we have a very clear sense of where we've been, and work with the organizations to figure out what are the best practices



going forward for that office. Without committing to doing anything in particular based on those recommendations—I would

I am very interested in creating a type of Conviction Integrity Unit to review the accuracy of convictions in cases of folks who are claiming innocence. In Virginia, it's extraordinarily hard to get records in a case. There's the Freedom of Information Act, but if I file the equivalent of that in Maryland I get the police investigations file, I get the state's attorney's files. In Virginia, if you file a FOIA with the police department, most police departments will tell you there is a file by that name and they are going to exercise their discretion not to give it to you. So it's very hard in Virginia to find evidence of innocence after you've been convicted.

There is another piece of this. In Virginia, even as a defendant when you've been accused, you don't have the right to the police records in your case, you don't have the rights to documents and discovery in your case. It's astonishing, right? If you have a civil suit, both parties are required to exchange information, you know what witnesses the other party plans to use, you've had a chance to depose those witnesses, you've exchanged documents and records. In a criminal case, that doesn't happen. So you have no rights to it. Virginia is very much an outlier on this issue, and so we're never going to get to a place where we're getting documents after a conviction if we're not getting records and documents before somebody goes to trial.

If you were to come into office, would you change the practices of the prosecutors in your office in terms of how they communicate the discovery with the defense attorneys?

The commonwealth's attorney in Arlington, their office does not give documents to the defense. What they do is that they permit defense attorneys to go into the commonwealth's attorney's office where they have to sign an affidavit promising that they will not photograph, sign or copy documents in any way. They're permitted to take notes of whatever files the commonwealth's attorney gives them. That's what passes here for open-file discovery.

I would give electronic copies of whatever I am permitted to give by law. If there's a situation where a witness, or somebody's safety is at issue, I would seek a protective order from the court so that the attorney can see it but the defendant can't. That's what happens in D.C., and that's what happens in Maryland, and it's a system that works.

I want to go back to what you said about prosecutors' discretion to bring charges. Some prosecutors have adopted policies of declining to prosecute certain types of cases. The commonwealth's attorney of Norfolk recently said that he would not prosecute simple marijuana possession; Rachael Rollins, Boston's new DA, campaigned last year on a list of charges, which include many charges besides marijuana possession, that she would not prosecute. Are there categories of offenses that your office would decline to prosecute, and do you plan to release a list of those like Rollins did?

At the moment I would not prosecute simple possession of marijuana cases. I would have to look and think about what other specific crimes that I would decline to prosecute. But simple marijuana possession is at the top of that list, because I think largely it's a crime that doesn't have any victims, it's not a crime in so many places, and I'd rather spend the resources of the office pursuing cases that have victims and that are more complex, like fraud cases, like wage theft cases, like sexual assault cases.

Are there things that you like to change about the level of charges, or the existence of charges, for drugs other than marijuana?

I would want to create more robust drug treatment programs, divert more cases into drug treatment programs, and really start treating addiction as a medical problem. I don't think one round in drug court makes people better, and so I would try to divert cases of possession of other drugs. And we know that diversion works. We have data that diversion works.

The criminal justice system has a disparate impact on different racial groups, and reforms implemented in some states have not alleviated those disparities even if they've reduced overall sentences or the overall incarceration rate. How would you make sure to confront the racial inequalities of the criminal justice system, and to make sure that the changes you implement as commonwealth's attorney actually reduce racial inequalities in Arlington?

That goes to data collection because we need to figure out where we've been. The public should be demanding not just conviction rates but also data about which crime are being prosecuted, what the socioeconomic background is of the defendants and the victims and the cases that they prosecute, and continue checking to make sure that what you're doing is working, both in terms of preventing recidivism, but also trying to treat people fairly.

Much of the conversation around criminal justice reform revolves around so-called low-level offenses. What is your view toward how Virginia's criminal justice system handles higher-level charges and categories of violent crime, and would you adopt policies to rein in the length of sentences and the amount of de facto life sentences?

Everything is going to be a case by case circumstance. The data shows that people tend to age out of criminal behavior, and that overly lengthy sentences pass the point of diminishing returns. Right now prosecutors can stack multiple overlapping charges in order to get extremely high sentences. Charging with accuracy and restraint will reduce a lot of sentences because it will reduce the world of sentences that can be imposed. But again it's a case by case basis.



seek the death penalty while in office

I would not seek the death penalty. There have been 164 exonerations of people on death row in the United States since 1972. Those are 164 people who we would have killed but for the fact that they got really lucky, and there was some kind of evidence in their case, and there were lawyers willing to put in their time, usually *pro bono*, to work on their cases, and stuck by them for years upon years, and that there were courts or governors who were open to hearing that evidence and acting on it. By no means have we exonerated every innocent person off of death row. It's the one punishment that you can't walk back from once it's been imposed. And we know from data that it's imposed disproportionately on people of color.

You have expressed support for reforming Arlington's bail system. What do you think are the elements that bail reform needs to both end inequality in terms of people's financial capacities and make sure to actually limit pretrial detention, since there have been cases of reform around the country where reformers have expressed concern that limits added on cash bail will not reduce pretrial detention? How do you think that goal can be fulfilled?

I favor ending the use of cash bail for low-level charges and potentially using validated risk assessment tools for purposes of determining level of services. The presumption should be that a person should be released, unless the individual is dangerous. We know from jurisdictions that have adopted these reforms that people do show up for court and that crime does not increase with these reforms. In other words, helping people keep their jobs and maintain community ties helps keep us safer. I think that we need to educate the stakeholders and work with the stakeholders to make sure that the default does not become locking somebody in rather than releasing them, to make sure that we use technology like automatic text messaging as tools to help us. Having wrap-around services once somebody is out not only will help them show up in the court and do what they're supposed to do in the legal system, it also helps recidivism rates.

Do you think that there is a role for the commonwealth's attorney besides the prosecution of cases to think about how people are reentering the communities after they've been released?

I think that the commonwealth's attorney has a very holistic role in the system. I think that they have a role in prevention, they have a role in helping create alternatives to incarceration, they have a role in prosecuting cases, and they have a role in ensuring that the way that they prosecute and the considerations in the prosecution lead to successful reentry. One of these things is the immigration consequences of a particular case. If you are plea bargaining and you're the prosecutor, one of the considerations that you should be thinking about is how do the charges affect the immigration status of this person. Are you going to take this person away from their family and put the family in economic distress and that sort of thing when it's not necessary? Or, how are we going to fashion a diversion program that will work with the Virginia Hospital Center and with the community services board, and the jail? We should all be working together to make sure that if somebody is diverted, if somebody is released, they have the services that they need to prevent recidivism. The data is very clear that these services cost less than incarceration and have a better result than incarceration. Those are the things that make us safer, and that's what a commonwealth's attorney should be thinking about, not just about prosecuting cases.

What do you think is the proper age at which to treat a defendant as an adult, and are you in favor of strict limits on an age below which you would oppose doing so?

I don't think it should be an option before somebody is 16, or even at 16. Brain science tells us that people's brains are not developed into their early 20. Right now the law in Virginia is that if you're 14 and you do something that that would be a felony if you were an adult, you can be charged as an adult. I don't think a 14-year can begin to make the executive decisions an adult can make. So I think that's absolutely inappropriate.

I would want to think through a different way of treating older kids who might have done violent offenses, maybe something like a system whereby they're treated like juveniles but then sort of reevaluated when they're adults and their record in juvenile detention is reviewed. But I would be open to alternatives, and I would want to do them based on what evidence shows works, and what is required to keep people safe, and what is important to treat people fairly.

One issue in the election already has been that Theo Stamos had expressed concern about then-Governor McAuliffe's policy of restoring the voting rights of Virginians once they complete a sentence. This year, bills debated in the legislature would have altogether ended the practice of stripping individuals of the right to vote when they are convicted of a felony. What is your position toward whether anyone should be stripped of their right to vote, and on how far should that practice go?

I don't think people should be stripped of their right to vote. I know that these disenfranchisement laws were about making sure that black people would not be able to vote, and I think that we need to pull ourselves away from that history. I think without a doubt, if somebody has served their time, they should have their civil rights returned to them.



have to apply to a court in order to get your gun rights back. The reason I'm bringing this up is that there were some misleading statements trying to explain the reason to the opposition to McAuliffe's executive order and connecting the opposition to gun rights. The two are not connected. There is a separate and distinct procedure that happens in court, when the commonwealth office can object, and when an individual has to show good cause to get their gun rights back. I think returning all the political disability pieces of disenfranchisement is extraordinarily important if we want to say to people, 'you buy into the rule of law, contribute to society, and be a productive citizen,' we can't say then, 'we aren't going to treat you like a citizen.'

To clarify, the bill debated this year was to restore the right to vote even before somebody has completed their sentence and ended the practice of disenfranchising altogether. If such a bill was introduced again while you were in office, would you support it?

I would support folks who are incarcerated voting as well. If you're going to be counted in the census, and you're a citizen, I think you should be allowed to vote. I don't think that keeping the franchise intact is going to create—I'm not sure what danger it is folks are afraid it's going to create—but I don't think it's going to lead to anarchy. People who are incarcerated don't lose their constitutional rights. To be sure, the way they exercise those rights may be curtailed by the fact of their incarceration and by the need for prison officials to maintain security but generally, incarcerated individuals do not lose their right to free speech, or to free exercise of religion, or their parental rights, or their rights to marry, or indeed their right to be free from cruel and unusual punishment. Yet, with the exception of Maine and Vermont, every state in the US deprives prisoners of voting rights. The community is not made more safe and justice is not done because you say to prisoners they cannot participate in political life while incarcerated. The only thing the policy accomplishes is to impose another form of punishment but, in the final analysis, if what we are interested in is safety and justice, it's hard to make a rational argument that either of these things are served by denying prisoners the right to vote. And we should never forget that these laws are the vestiges of Jim Crow.

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