

Tim Lueders-Dumont Candidate Response to ACLU
Addison County State's Attorney Candidate Questionnaire

July 10, 2022

ACLU Introduction: “The following is a survey of fifteen mostly ‘yes’ or ‘no’ questions. We seek your responses so that the ACLU of Vermont, our nearly 10,000 statewide members, and your potential constituents can know your positions before they go to the ballot box. Where indicated, please check ‘yes’ or ‘no.’ If you leave a question blank, we will mark your response as a ‘refused to respond.’

Tim Lueders-Dumont Candidate Response to Introduction of ACLU Survey:

While I deeply appreciate the YES/NO survey, the issues it raises, and its stated purpose, I do find that it is limited. Even with questions where it would have been possible to respond with a “yes” or “no,” I feel that more context is required. I have drafted written responses below.

If elected, my intention is to mirror, at least in part, the Chittenden County, Washington County, and Windsor County model of drafting a series of more specific policies. I would love to include the ACLU and other stakeholders in that process if there is interest. And, eventually I would hope to work with the community to draft a countywide strategic plan for the office.

I deeply appreciate the mission of the ACLU nationally and in Vermont and I support the prior ACLU-Question format (from years prior) where candidates could answer questions with written explanations. I really appreciated this approach as it allowed for the voters to learn more about the candidates, beyond YES or NO. I know it assisted me in my voting choices.

YES/NO might be appropriate for some questions, but I hope to have more to say on the important topics which I believe are at the core of the drafted questions.

Because I have made the choice to respond with written explanations it is my hope that the ACLU does provide my responses rather than label my response as a “refusal.” Many of my answers below are also responsive to a VTDIGGER survey that I also submitted.

QUESTIONS

Q 1. Candidate Name:

Tim Lueders-Dumont, Current Deputy State's Attorney in Washington County. I am running for State's Attorney in Addison County.

Q 2. For many, the money bail system perpetuates widespread wealth-based incarceration: those who have money are released from jail while their court case is pending, those who do not have money remain in jail while their case is pending. Will your office adopt an office-wide policy to not request monetary bail?

No. If elected as State's Attorney in Addison County I would work with the community to draft and create a bail policy, to put into place guardrails for the use of bail to serve the aims of accountability but prohibit use of bail for improper purposes. Bail should never be used to punish individuals as they await the disposition or trial in a pending case. Likewise, bail should never be imposed as a cudgel against those in our communities with limited financial resources and, or, limited or lack of housing.

In practice, I have requested bail, sparingly, in cases to ensure that individuals with pending or filed cases appear in court and do not abscond. For example, I have requested bail where a person has repeatedly refused (or where there is a risk of flight) to come to court proceedings, including for arraignment, jury trials, jury draws, change of plea events, motion hearings, and status conferences etc. I have learned that each Judge is different, each situation is different, and each county is different. A request for bail may be accepted in County A and then rejected in County B. Likewise, a request to hold-without-bail, in an attempt not to impose monetary bail, may be rejected in County A but accepted in County B.

Prior to the imposition and grant of bail, consideration of no-bail or no-conditions must be considered as well as non-monetary conditions of release, and, in certain, limited situations, use of a hold-without-bail request may be appropriate. However, a hold without bail request (HWB) can only be made in cases involving a charge with a maximum penalty of life imprisonment or when there is a felony charge that involves an element of violence.

Unfortunately there are certain situations where conditions of release will not ensure that an individual will appear in court. Cash bail should only be imposed if conditions of release are deemed to be insufficient and the situation either does not warrant hold-without-bail or a hold-without-bail does not apply.

Further, I would support a legislative effort to set an automatic time period for bail review within a certain number of days (e.g., 60-70 days). Automatic review would force judges, prosecutors, and defense attorneys to stay focused on cases where there has been bail imposed and where that bail is holding that person in an incarcerated setting.

For all members of our community (defendants, alleged victims, and witnesses) who come into contact with the criminal justice system it is essential to keep cases moving in an efficient manner. When individuals refuse to appear it grinds the system to a halt and impairs a delicate and already painfully slow process. The criminal justice system has deep and historic flaws and State's Attorneys must do everything in our power to keep cases from languishing. While I try to avoid the use of bail, limited use of bail can be justly applied to keep cases moving by engaging individuals who might otherwise never appear in court despite the ability to do so. In most cases where I have requested bail, once the person, who had been missing, appears in court I request to strike the bail.

Q 3. In 2018, Vermont passed a law lowering the maximum bail amount for expungable misdemeanors to \$200. If you will not adopt a policy to never request monetary bail, will you adopt an office-wide policy to not request monetary bail for individuals charged with expungable misdemeanors?

No. Same answer as above.

Q 4. Access to a vehicle is a practical necessity in a rural state, and yet many Vermonters have lost their licenses because they have been unable to pay traffic fines. In 2015, then-State's Attorney T.J. Donovan instituted a "Driver Restoration Day," where those with suspended licenses could pay \$20 per fine and have their license restored. Within one year of being sworn into office, will you institute or participate in a similar driver's license restoration program?

More information:

<https://www.sevendaysvt.com/OffMessage/archives/2015/03/20/thousands-turn-out-for-ticket-amnesty-day>

Yes - I would intend to work to set up a process that allows for driver restoration in Addison County as soon as possible. Hopefully within one year. And, I think the Attorney General's Office should lead a statewide effort, as the State's statewide attorney, to hold clinics in each county each year in coordination with local State's Attorneys and the DMV.

Q5. Will you, at a minimum, maintain the Addison State’s Attorney Office’s DLS diversion program?

Yes. As a current Deputy State’s Attorney I work closely with the local Community Justice Centers (or “CJCs”) and Diversion programs who work with our community members who receive referrals. These programs are absolutely essential, and I support their efforts 100% by referring cases to both CJCs and Diversion. In practice, if someone has their license reinstated I will dismiss the DLS.

CJC and Diversion programs have been proven to provide cost-effective and outcome-driven opportunities to engage with the underlying conduct outside of the court process with an ally-perspective and outcome-driven approach.

Q 6. The Vermont House of Representatives recently passed a bill that would have reduced penalties for drug prosecutions. One of the bill’s goals was to reduce racial disparities in Vermont’s drug prosecutions. Will you write and publish a drug prosecution policy that adopts, at a minimum, the categorization and limited penalty structure of H. 505 (2022) as passed by the Vermont House of Representatives?

More information about the specific penalty changes:

<https://legislature.vermont.gov/Documents/2022/WorkGroups/House%20Judiciary/Bills/H.505/Drafts,%20Amendments%20and%20Other%20Legal%20Documents/H.505~Michele%20Childs~Penalty%20Comparisons%20-%20Chart%20~2-3-2022.pdf>

I am supportive of de-felonizing personal use possession of alleged crimes and emphasizing a treatment rather than punitive response. In Addison County, I support a Treatment Court program. Presently in Washington County, Chittenden County, and Rutland County individuals may be referred to drug-court treatment programs. While transfer of cases is possible from Addison to those counties in certain situations, Treatment Court should be an option in each county where substance use disorder is present and where the overdose crisis is present. In other words, Treatment Court should be available no matter where you live in Vermont. From my conversations with community members Addison County is in need of treatment court as an option.

From a policy perspective, I support elimination of the disparity and distinctions between how Crack and Cocaine possession are treated. I would support future H505-style legislation and would aim to serve the policy goals of H505 in practice as State’s Attorney in Addison County.

Q 7. Will you institute or participate in an expungement clinic in your county within one year of being sworn in?

Yes, I would intend to hold a clinic in Addison. Further, I would support efforts to expand services within CJC and Diversion Programs to include expungement and sealing opportunities, as well as public and consumer education about the Criminal and Juvenile Justice systems. This may require an increase in staff, training, and resources – including legal oversight. I believe that providing further services to our community members who are already engaged in programming is the next step to effectively provide catered pathways to better outcomes and reduction of taxpayer cost.

I would call on the Attorney General’s Office to work with the Legislature to immediately FUND and EMBED an expungement attorney within each Diversion Program office in each county or CJC (if not combined). For people who are already stopping into these offices for services and diversion I would support providing them with access to more services, including expungement and sealing assistance. I would support as many expungement clinics as possible. In practice, I engage in discussions with defense attorneys in my current role as Deputy to expedite the expungement process on a case-by-case basis for represented individuals.

Q 8. Will you, at a minimum, maintain the Addison County Prosecutorial Guidelines?

In Chittenden, Washington, and Windsor the State’s Attorneys have produced a series of policies that provide guardrails for the office on a variety of topics. The policies also inform the public about the approach taken by that office. In Washington, in my role as a Deputy, I have attended community meetings about housing and substance-use-disorder and handed out the office policies to members of the community. I would endeavor to approach the Addison County office with a similar multi-prong review which would include the production of Addison-specific policies.

My intention is to mirror, at least in part, the Chittenden, Washington, Windsor model of drafting a series of more specific policies and would intend to include the ACLU and other stakeholders in that process if there is interest. Eventually, I hope to work with the community to draft a county-wide strategic plan.

If elected as a newly elected State’s Attorney I would need to be able to draft new policies rather than be confined by a prior policy drafted by a prior State’s Attorney. I might adopt aspects of the policy. For example, as the current Deputy in Washington handling most of the post-conviction relief (“PCR”) claims in my current role - I agree with the prior-adopted Addison position that PCR cases should "be reviewed based upon the merits of a petitioner’s claims.

Where merited, settlement may include an amendment of the charge, reduction of a sentence, or dismissal of a case."

Q 9. Will you track and publish data on your office's charging decisions, diversion recommendations, bail recommendations, plea offers, and sentencing recommendations by race/ethnicity, gender, age, and public defense eligibility to identify and address racial, gender, and class disparities in your office's prosecutions?

Yes, to the extent that data is collected and to the extent possible. I would have to work with the central SAS office and the IT system staff to check to see what data we have access to and what can be published. In addition, certain categories of data may be maintained, or should be maintained, by the judiciary, the defender general and law enforcement. Charging decisions, referrals to diversion, arguments for conditions, and bail arguments are already open to public review. I would like to explore how we could further track data specific to Addison County and potentially publish certain data going forward.

Q10. A recent Council of State Government's report recommends Vermont's state's attorneys' offices "develop internal guidance to support consistency in charging and plea-bargaining decisions." To the extent your office does not have such policies, within two years of being sworn in, will you publish policies regarding charging, bail, plea bargaining, Brady/Giglio obligations, sentencing, and data collection?

As noted above I would work with the community to study the drafting of policies specific to these topics and specific to Addison County.

In plea bargaining with defense counsel and eventual plea agreements, each case is unique because each person is unique, and each situation is different. Thus, each case should be approached with empathy and care as to the individual, or individuals involved, and as to potential victim-impact.

Relatedly, concerning sentencing and disposition, I support statewide changes that would provide for a pathway for an Environmental & Climate Justice Action Plan and policy initiative as applied directly to the Criminal Justice System. The Action Plan must be multi-pronged and would have overlay as to case disposition:

(1) First, we need a legislative change so that Judges and Prosecutors must consider environmental and climate justice factors (including any data collected as a result of the Environmental Justice bill) in sentencing and disposition of cases, including that Prosecutors should consider such factors when making charging decisions, additionally, the Department of Corrections should be required to inquire as to whether individuals who are set to be sentenced were impacted by environmental and climate justice factors (whether they grew up in a house

with lead paint or experienced environmental pollution that impacted health and wellbeing, whether they experienced flooding or lived in a flood zone, or experienced drinking water pollution health impacts...etc.)

(2) Second, if elected State's Attorney I would work to engage the community to implement an Addison County Environmental & Climate Justice Action Policy that would require deputies in my office to consider, in their use of discretion, environmental and climate justice factors when settling cases, charging cases, and making sentencing arguments.

(3) In sum, I would use the office of the State's Attorney to advance environmental and social-justice issues - beyond the job description of a typical County Prosecutor.

Q 11. Addison County is home to numerous immigrant farmworkers. As state's attorney, will you train and direct prosecutors, in written policies, to consider the immigration consequences of a conviction during each stage of a case, and to favor dispositions that avoid adverse immigration consequences?

YES. In addition to a written office policy. We need county-wide and statewide training for defense attorneys, prosecutors, and law enforcement on a yearly basis. This topic is incredibly important. I would intend to plan on hosting a training/summit on immigration-related topics as they concern the criminal justice system in partnership with local defense attorneys and other community partners in Addison County.

To the extent needed, I would support all efforts to collaborate and coalesce county law enforcement around a stronger and more protective "fair and impartial policing" policy, as suggested by Migrant Justice and the ACLU, both in practice and philosophy, to send a message to federal authorities that it is not the role of the State's Attorney or local law enforcement to enforce federal, civil immigration laws.

Fair and impartial policing and prosecution should be about much more than saying the right words - it should be about practice and procedure, and it should reflect the truth that potential witnesses and victims to crime are more willing to come forward if they know that they will not be reported to federal authorities. Regardless of where someone is born, if they live in Addison County they should be able to call the police for assistance and not worry about who might knock on their door or stop their car the next day.

Likewise, while working for State's Attorney Sarah George I was assigned as lead researcher and drafted a fair and impartial policing policy memorandum and policy recommendations that were adopted by the office. In this effort I worked with Migrant Justice to produce

recommendations for a stronger Fair and Impartial Policy in line with the ACLU recommendation concerning the State's baseline model policy.

Q 12. Vermont is in the midst of an unprecedented overdose crisis. Overdose prevention sites or mobile services, where individuals can use their own drugs in view of medical personnel ready to save their life, help prevent needless deaths and have been implemented in hundreds of locations around the world. There has never been a recorded death in an overdose prevention site. Do you support the opening of overdose prevention sites or the use of mobile overdose prevention services in Vermont?

The unprecedented overdose crisis is in its third wave, the Fentanyl wave. The legislature should immediately focus all of their attention on shifting Vermont's mental and public health efforts on harm prevention and saving lives. As noted above, I support an Addison County treatment court program.

Concerning the potential for an OPS model, I support studying this topic and any efforts to understand how we can provide equitable safe access to lifesaving measures across the board. Any future OPS model, or other options, MUST ensure that people who happen to live in rural and remote communities would not be excluded. Any future model must ensure that individuals without transportation or individuals without financial means could benefit from an OPS or other lifesaving measures. In the study of this topic questions of liability for providers and employees must be addressed. I believe the legislature needs to further study this topic from a logistical and liability perspective. One concern, given the already high-level of traffic-related fatalities in Vermont, is how individuals would get to and from OPS locations.

Q 13. As state's attorney, will you expand your offices use of restorative justice and court diversion services and publish data showing such an expansion?

I am supportive of expanding CJC and Diversion programming as long as adequate staff, training, and resources are made available. The Attorney General's Office and the Judiciary are the appropriate entities concerning diversion data.

As noted above, I would support efforts to expand services within CJC and Diversion Programs to include expungement and sealing opportunities, as well as public and consumer education about the Criminal and Juvenile Justice systems. CJC and Diversion programs across the State, and in each county, should be heavily utilized, and potentially presumptive in many cases involving non-violent misdemeanor charges as a means to prudently engage with community members that come into contact with the criminal justice system.

I firmly believe that CJC and Diversion programs are a prudent and effective means of diverting cases out of the overburdened and resource-intensive court process. As Addison County State's Attorney I will refer cases, where appropriate, to local CJC and Diversion programs in as many instances as possible based on application of prosecutorial discretion, engagement with defense counsel, and community partners. Successful CJC and Diversion programming allows State's Attorneys to focus on the most serious cases. From both a taxpayer and reform perspective Diversion and CJC programs remain as essential as ever and expansion of services should be explored.

As noted above, data should be maintained by the Attorney General's Office and Judiciary. However, I would support exploring and potentially setting up an internal process to help track data in Addison County.

Q 14. Vergennes traffic stop data from 2015-2019 showed that Black drivers are nearly 4 times as likely as white drivers to be searched during a traffic stop, despite being less likely than white drivers to be found with contraband during searches. Black drivers were also two to four times more likely to be stopped by Vergennes police. Will you adopt a written policy, similar to that of the Chittenden County SAO, where non-safety related traffic stops resulting in arrests are presumptively not charged because they may be based on a pretextual stop?

Chittenden County policy: https://www.acluvt.org/sites/default/files/2022-01-27_-_non-public_safety_stop_policy.pdf

There is an obligation to review each case on its merit and exercise prosecutorial discretion accordingly when accepting and declining case-intakes. Statewide, there has been an alarming rate of traffic safety fatalities over the past few years. The data is a concern and I look forward to better informing any written policies by engaging with community stakeholders. Like Chittenden, I will approach the issue after review of the information that is available and would inform any written policy after I have been elected rather than a predetermined policy without community input and access to all of the available data.

Q 15. Will you decline to prosecute children for typical childhood behavior such as disorderly conduct, fights, smoking marijuana, or other low-level infractions committed in school or the community that do not result in serious physical harm, and instead reject the case or refer them to restorative justice processes?

I support referral to the restorative justice process. In addition, I support efforts to raise the age at which individuals may be prosecuted in adult criminal court. For many years research has shown that ongoing brain maturity and development extends well beyond teen years (see e.g., NPR and ABA articles from 2011 and 2015:

- <https://www.npr.org/templates/story/story.php?storyId=141164708>;
- https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/child_law_practice/vol-34/august-2015/understanding-the-adolescent-brain-and-legal-culpability/.

Based on the science I support raising the age. However, in practice, there must be an expansion of staff, services, programming, and capacity carefully designed to best support the system and the young people it aims to serve. DCF, the Judiciary, Offices of State’s Attorneys, Public Defenders, and DOC should be provided with training and additional resources to best serve an expansion of “raise the age.”

Young people, depending on the seriousness and severity of the conduct and victim-impact, should not have to have bear the weight, and field of lifelong barriers, of an adult conviction hanging over head because of something that occurred at young age. However, for certain deeply serious charges and factual circumstances raising the age may not be appropriate.

Q 16. Will you develop, implement, and/or continue updating a "Do Not Call" or "Brady" witness list, and require all prosecutors in your office to reject new cases and search warrant requests from police officers with histories of dishonesty, racism, or bias?

I support a county-wide and statewide database of “Brady” letters. It is essential for all stakeholders in the criminal justice system to know which law enforcement officers have been issued a Brady letter, especially when law enforcement officers move to new law enforcement jobs in other agencies or departments. Beyond the bounds of what is required by law, I believe that access to Brady letters and a Brady list should not be shielded from public inspection. In the vein of transparency, publication of the list will assist in more effective prosecution and build public trust. Disclosure and publication of Brady letters to the public, defense counsel, and defendants is an important pillar in the context of accountability and proper administration in pursuit of the ends of justice.

I support the ongoing maintenance of a database for officers who have received a Brady/Giglio letter both at the county-level and across the State. The use of prosecutorial discretion in rejecting cases and search warrants requests from these officers would be dependent on the basis for the original issuance of the letter.

Depending on the reasons for issuance of a letter for a specific officer, that officer may still be able to perform some functions of a law enforcement officer. However, in other circumstances, officer conduct and subsequent issuance of a Brady letter may effectively render an officer incapable of performing any/and/all duties required to perform as a law enforcement officer.

As noted in a recent ACLU of Vermont publication, <https://www.acluvt.org/en/news/are-vermonts-prosecutors-failing-report-bad-cops>, “. . . the 1963 U.S. Supreme Court case *Brady v. Maryland* and the line of cases that followed it established that when police officers commit acts that undermine their credibility – including bias, lying, and theft – prosecutors are obligated to disclose that information to defense counsel. Since then, the courts have been clear: prosecutors have a constitutional obligation to uncover and disclose evidence that could help a defendant’s case, including an officer’s credibility issues, and must err on the side of disclosure.” The Brady case imposed a duty on the Government to disclose relevant information about the law enforcement officer (or officers) involved in a particular case. In practice, Brady letters are memorialized and sent to defendants and defense counsel when an officer involved in the case had prior relevant conduct which may impact the instant case.

In response to the ACLU’s recent request for any policies relating to Brady requirements, “only one state’s attorney’s office (Washington County) had a formal policy of disclosing Brady letters to defense counsel.”

As State’s Attorney in Addison County I would propose adoption and application of a Brady policy, not unlike the Washington County policy, to ensure consistency and transparency when issuing Brady letters. (See ACLU investigation here: <https://www.acluvt.org/en/news/are-vermonts-prosecutors-failing-report-bad-cops>); (Washington County’s policy is linked here: https://www.acluvt.org/sites/default/files/2021-03-15_brady-giglio_policy_and_guidance.pdf).

The Washington County Brady Policy establishes a framework for the assessment, management, and disclosure of exculpatory and impeachment information in prosecutions handled by the State’s Attorney.

As detailed in VTDigger’s 2020 series on Brady letters, it is important to note that the standard for when an officer gets a ‘Brady letter’ “varies greatly across Vermont, depending on the location and the prosecutor. . . A Brady letter can be the death knell for an officer’s career, particularly if the county prosecutor won’t take their cases anymore.” (See

<https://vtdigger.org/2020/12/17/brady-letters-vary-vermont-counties/>). As noted above, as Addison County State's Attorney I would implement a Brady policy not unlike the Washington County policy.

County policies aside, a centralized vetted standard whereby State's Attorneys and the Attorney General's Office agree to a Brady framework would serve to educate prosecutors, defendants, defense attorneys, the public, and the law enforcement community. A vetted and accepted set of guidelines as to a Vermont Brady standard would assist in determining the framework, weight, and relevance of a particular Brady letter, placed within context.