

2018 Questionnaire for Prosecuting Attorney Candidates in Washington State

Please send responses to prosecutors@aclu-wa.org by 5:00 p.m. on Tuesday, October 2.

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Affiliated organizations:

American Civil Liberties Union of Washington (ACLU-WA)

The Arc of King County

Asian Bar Association of Washington

Asian Pacific Islander Coalition (APIC)-Spokane

Civil Survival

Consejo Latino

El Centro de la Raza

Equal Rights Washington

Faith Action Network

Gender Justice League

Justice-not-Jails

Latino Civic Alliance

League of Women Voters of Washington

Muslim Association of Puget Sound-American Muslim Empowerment Network (MAPS-AMEN)

OneAmerica Votes

Pioneer Human Services

Public Defender Association

QLaw Association of Washington

Strengthening Sanctuary Olympia

Spokane Community Against Racism (SCAR)

Washington Coalition of Minority Legal Professionals

Washington Immigrant Solidarity Network (WAISN)

Washington State League of United Latin American Citizens (LULAC)

Introduction

The United States leads the world in incarceration rates. We represent 5% of the world's population but house 25% of the people behind bars. Blacks, Latinos, and Native Americans are incarcerated at higher rates than whites; according to data published by the U.S. Census and U.S. Bureau of Justice Statistics, Black people are 6 times as likely as white people to be incarcerated in Washington. These data have led to calls for criminal justice reform by a broad and bipartisan range of legislative and law enforcement leaders here and across the nation.

The data have also highlighted the impacts of generations of institutionalized racism on educational and economic opportunities, which are inextricably intertwined with racial

disparities in neighborhoods experiencing persistent poverty, higher crime rates, and harsher criminal justice system responses. Public investment strategies have not yet caught up to the identified needs. For example, over the past two decades, research advances in brain development science confirm the critical role of adult mentorship of young people throughout their teens and well into their early 20s—years when the risk of criminal justice system involvement is highest. However, public investment in after-school and evening programs that strengthen bonds among families, schools, and communities has either failed to keep pace or been cut entirely.

Criminal justice policy is set primarily at the state and local levels. Prosecutors wield significant influence with legislators and policymakers who determine what supports will be available to individuals and families to address behavioral health needs and what investments will be made in communities to address poverty and other systemic conditions contributing to the prevalence of crime. Prosecutors also exercise tremendous control over who will come into the criminal justice system, how each case will be resolved, and whether incarceration will be a part of that resolution. The elected Prosecuting Attorneys for Washington's 39 counties set policies and standards that define what success looks like for the deputy prosecuting attorneys who report to them.

Metrics for Success: What metrics do you believe should be used to determine whether the Office of the Prosecuting Attorney is succeeding in its mission and improving the criminal justice system? How would you realign local, state, and federal budget appropriations to support your vision of how we could most effectively accomplish the following: 1. Prevent crime in the first place; 2. Provide crime victims what they need; 3. Hold people accountable for the harms they cause; and 4. Bring recidivism rates down as close as possible to zero?

The mission of our office is to do justice. We do not keep conviction rate data, because that is not the same as doing justice. I want to continue to shrink the footprint of the criminal justice system and partner with the community to divert people away from the court to a more effective and humane alternative for non-violent crimes.

One metric to keep is how many people are diverted and how many community justice programs we have built.

Bias: What training, supervision, and review policies and practices would you implement to identify and eliminate explicit and implicit biases in the screening, filing, and prosecution of cases by your office, and to promote equity and inclusion in your workplace?:

We have a moral imperative to address the racially disproportionate effects of the criminal justice system. I have made mandatory for my office training on cultural competency and implicit bias, and brought in speakers to address racial history in our nation, like Jeff Robinson of the ACLU, who gave a training session to my office about history lessons we were never taught. I also have formed an African-American Advisory Council which meets quarterly to discuss issues of justice and community engagement with young people caught up in the court system. We have a large and active Equity and Social Justice Committee in the office, which all of my leadership team belongs to.

Bail: In Washington, up to 70% of those in our county jails are being held pretrial because they cannot afford bail. Pretrial detention is a leading cause of mass incarceration and racial disparity in Washington's criminal legal system. What specific steps have you taken or will you take, if elected, to reduce or eliminate the imposition of cash bail and reduce the pretrial detention rate in the county jail?:

In King County, judges set bail based on the court rule referenced below. We are also developing a risk-tool to advise the judge with data. The Court Rule requires the judge to

consider relevant factors that might impact a defendant's likelihood of failing to appear or presenting a danger to the community.

It is too simple to just say, "eliminate money bail," without also building alternatives like pretrial services and technological systems like GPS and text to remind people of their court dates.

A recent study in Prince George's County, MD, showed what could happen if the rule is changed without commensurate infrastructure to provide alternatives to judges. A report dated June 21, which analyzed pretrial jail populations before and after a bail reform bill was implemented, shows that while cash bails decreased, judges opted to hold more people without bond rather than release them on their own recognizance.

The system of bail is abused when people are detained on minor charges because they have no resources, when they neither pose a danger to public safety nor a risk of flight. It is much more complicated when the court is making a decision on the status of a person who is charged with a serious violent crime.

After changes led by the Washington Minority & Justice Commission 15 years ago, State's court rules (CrR 3.2 for Superior Court and CrRLJ 3.2 for courts of limited jurisdiction which hear only misdemeanors) on pretrial release theoretically require unconditional release unless certain very specific finds are made regarding the likelihood that the defendant will commit a violent crime if at liberty, or that there is no way short of bail to secure the defendant's return to court. Some courts adhere only loosely to the framework of the rule, however. Thus, the changes needed are less to the legal framework, and more with respect to implementation. I plan to:

- (1) Support implementation of a release order developed by Minority & Justice Commission members that steps judges through the pretrial release decision and requires unconditional release unless the specific findings called for to set money bail or other conditions under CrR 3.2/CrRLJ 3.2 are met;
- (2) Propose with the Department of Public Defense a joint training for our staff on the court rules' presumption of pre-trial unconditional release, and the national movement to challenge money bail;
- (3) Work with the Bench in the County and the State to build alternative systems to ensure that people show up for court;
- (4) Propose to the Department of Public Defense that we co-sponsor a workshop at the next King County bench-bar conference this fall on barriers to full implementation of the presumption of unconditional pre-trial release under our current Court rules, identifying where and why the current rules are not fully implemented and developing ways to improve compliance; and

Randomly personally audit 50 pretrial release advocacy positions taken by my office in a range of misdemeanor and felony cases to ensure that, to my satisfaction, our advocacy positions comport with CrR 3.2's presumption of unconditional pre-trial release.

Disabilities: People with intellectual disabilities have a 4 to 10 times higher risk of becoming victims of crime when compared to those without disabilities. They are also over-represented in the prison population: while they comprise just 2 to 3 percent of the general population, they represent 4 to 10 percent of the prison population, with even greater disparities in juvenile detention facilities and jails. Would you support cross-training and coordination among schools, police departments, victim service providers, and judges and courtroom staff to promote a comprehensive community-based response to situations involving people with intellectual and other developmental disabilities so they can experience equitable justice? If so, how?:

Yes. People with mental illness, developmental disabilities, or who are on the autism spectrum should be diverted from the Courthouse to programs that provide access to wraparound services that can help them. Presently there are few place to divert them to. I strongly support continuing to build these services.

Drug Policy: Drug arrests have risen in Washington over the last few years – more than 12,000 in 2016. Do you believe that people with substance use disorders should face criminal penalties? Do you believe people who use drugs and do not have substance use disorders should face criminal penalties? What types of charging practices, diversion programs, and treatment programs do you support?:

Substance-use disorder is a disease. That's what the medical science tells us, and it's time we started acting like it and creating a response that's more about help and less about handcuffs. I have proposed to our County leaders that we build a public health based response for all individuals caught possessing 3 grams or less of any drug. I was a founding partner in implementing the LEAD (Law Enforcement Assisted Diversion) Program, and I am actively working to promote LEAD expansion throughout King County. Relatedly, I have determined to no longer file low level simple possession cases (under 3 grams). When LEAD is available as an alternative to filing, this will be a more compelling response to real issues in neighborhoods and for individuals and families that flow from harmful drug use than simple non-filing, which is why I am investing significant effort in ensuring that LEAD is taken to scale Countywide, to

provide a “divert to what?” alternative that is meaningful and effective. LEAD is a proven effective response to such behavior that occurs without a jail booking or the filing of any sort of charge. I am prepared to stop filing those charges in favor of offering individuals community-based help and harm reduction-based services, and am seeking support from the Executive and County Council to take LEAD to scale countywide to facilitate this. In addition, I have publicly supported the creation of safe injection sites in King County.

Mental Health: According to the Washington State Department of Social and Health Services – “demand for all forms of mental health services far outweighs what is currently available including competency evaluation and restoration services.” What specific steps will you take as prosecutor to keep people with mental illness out of the criminal justice system and to get them into community treatment?:

I was proud to be named NAMI’s public official of the year this year. We desperately need more programs and community capacity to offer help to people with behavioral health disorders.

Nationally, for each person who’s seriously mentally ill, who’s in a state-funded psychiatric hospital, there are 10 in state prison. In an effort to change this, I was one of the collaborators to establish the Crisis Solutions Center in 2012—a program that allows medics and police to refer nonviolent people with mental illness and drug dependency to a treatment option rather than jail. I believe this was a good step towards helping those who are mentally ill, but I recognize that there are still far too many individuals in the criminal justice system suffering from mental illness without the proper care they need. I will continue to engage community leaders in an effort to define accountability and devise alternatives to the criminal courts for the complex social problems that have historically been dumped onto the courthouse steps, which absolutely includes mental illness. In King County, we can choose to invest in the kind of community-based treatment that can help people.

Prostitution:

In 2011, King County and the City of Seattle launched Law Enforcement Assisted Diversion (LEAD), the first known pre-booking diversion program for people arrested for narcotics or prostitution offenses in the United States. In prostitution cases, offering people diversion to services at the first point of police contact, before any formal charges have been filed by a prosecutor, is intended to reduce the harms experienced by individuals who are trafficked or are engaging in the sex trades due to complex economic, mental health, and substance use reasons. What are your thoughts on this approach?:

My office and my leadership team are original partners in LEAD. Studies show that LEAD has

been very effective at connecting people to services and decreasing recidivism. I have been working with our County Executive and County Council to expand LEAD to the entirety of King County.

Automated Decision Making: Increasingly, judges are turning to risk-assessment tools created by private companies to make bail, sentencing, and supervision decisions. The private vendors do not disclose the calculation formulas and processes that produce the tools' recommendations. Significant evidence suggests the recommendations produced by these tools amplify existing racial biases in our criminal justice system. What recommendations would you make about whether and how the county should use such tools, and how the county should monitor and evaluate their reliability and effectiveness?:

I am aware of how some risk tools bake in disproportionality. I am following the results of the Arnold tool in Yakima county that is producing desired results. Ultimately it will be up to the judges to decide whether to use a tool as a guide.

Juvenile Justice: In 2018, the Washington Legislature passed SB 6550, which expands the ability of prosecutors to divert most juvenile offenders, including those who have committed felony offenses or who have prior history. If you are elected, how will your office use the expanded authority granted by SB 6550 to implement diversion programs that are responsive to the needs of youth and prevent prosecution and incarceration?:

In the last ten years, my office has reduced the number of criminal charges filed against juveniles from nearly 8,000 a year down to around 1,600. The county has gone from having roughly 200 juveniles in detention to about 60 at any given time.

As Prosecuting Attorney, I launched a new juvenile felony diversion program called CEDAR (Community Empowered Disposition Alternative Resolution), where juveniles charged with certain felonies can accept responsibility by pleading to a greatly reduced charge, then earn further reductions or outright dismissal by engaging in community-based interventions. My office has also implemented a pre-filing juvenile diversion program for most misdemeanor crimes (Choose 180), and a juvenile diversion program for youth who have been referred on domestic violence charges for hurting a parent or sibling (FIRS).

In addition, I do not prosecute school suspension or expulsion cases. I have built a truancy dropout prevention program designed to keep youth out of the court system and in school. Instead of enforcing our State's truancy laws in juvenile court, my truancy dropout prevention team works with school representatives to offer school based interventions to get to the heart of why students are skipping school. Typically, the reasons are not criminally motivated. Instead, students may feel disengaged, they may be being bullied, they may have to care for younger siblings, they may not have transportation. My team works with the Court to "stay" or halt truancy petitions so that they and the schools can work directly with students and families to re-engage students with the education process.

Reentry: The Washington State Institute for Public Policy released a 2017 report detailing the effectiveness of several existing programs in combating recidivism and aiding reentry. If elected, how will you evaluate and utilize current programs to aid reentering individuals in your community? If elected, how will you and your office consider new and innovative ways to ensure successful reentry?:

Currently, I am the Co-Chair of the Statewide Reentry Council, which advises the Legislature on removing collateral consequences, banning the box, improving prison programming, and investing in community mentors to help returning individuals with the transition from prison to the community.

In 2015, I encouraged lawmakers to reform the hidden barriers, or "collateral consequences", that prohibit people who have already paid their debt to society from reentering as productive members. In Olympia, they listened and passed legislation that will reduce recidivism by providing Certificates for Restoration of Opportunity, which will prove that a person has paid their debt and is in good standing with the courts. This has allowed many people to gain access to job-training, education, and other opportunities that they would not have otherwise had.

In 2012, my office released a report that included a series of recommendations for "Investing for No Return". The goal is to implement policies that improve the reentry system for those released from Washington state prisons. The recommendations include providing housing, food, clothing, and a job or educational opportunity for those facing reentry. These policies would go a long way in increasing public safety and reducing homelessness in our communities.

Hate Crimes: According to Uniform Crime Reporting (UCR) data compiled by the FBI, hate

crimes have been on the rise in the U.S. since 2014. What instructions would you provide deputy prosecuting attorneys and support staff about the investigation, charging, and prosecution of hate crimes by your office? What actions would you take as a public official to discourage hate crimes in your county?:

I would instruct deputy prosecuting attorneys continue our strong record of prosecuting malicious harassment cases involving all types of victims, and partner with the community to publicize risks and encourage reporting, as well as working with law enforcement to continue to work on best practices. My office is participating in a training by Anti-Defamation League in Seattle this fall, in which members of the office will be students and instructors. As a public official, I have worked to ensure our office has an active Equity and Social Justice effort to make it clear that we welcome all, and do not tolerate hate.

Immigration: For immigrants, being convicted of a crime can result in double punishment. They may go to jail, but unlike citizens, they may also face the devastating punishment of deportation - even for a simple misdemeanor. These severe consequences happen even if they have a green card, a U.S. citizen spouse and children, or long standing community ties. In the case of *Padilla v. Kentucky*, the U.S. Supreme Court made clear that prosecutors have the power to consider immigration consequences when they are making decisions about how to resolve a case, resulting in more just outcomes for everyone. When a conviction can lead to such disproportionate consequences even for a low-level offense, how do you plan to ensure just outcomes for immigrant defendants and their families?:

My office has worked to do all that is possible to maneuver the criminal justice system to mitigate the increasing overlap of immigration and criminal law. When an immigrant is at-risk for deportation for a low-level offense, my office has made a concerted effort to bring charges that do not bring with them the risk of deportation but still give an appropriate legal penalty for the crime committed. For instance, in 2017, a student at the University of Washington was arrested after recklessly swerving while driving. She had a blood-alcohol level twice the legal limit but she did not injure anyone else. She was a 'Dreamer', brought here undocumented as child, a student in good-standing, and had no prior criminal record and had she been convicted of a DUI she would've also faced possible deportation. Rather than offering a plea deal for a DUI, our office offered a plea deal for reckless driving—which removed the risk of deportation and the loss of her protected status under DACA. I believe that it would not be just to deport this student to a country she does not know for a minor, non-violent crime.