

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.

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?

When I came into office, our leadership team cultivated a "public service culture," where the emphasis is not on individuals racking up trials, but instead on the team serving the public. Moving from the "trial warrior culture" to "the public service culture" was the first of many progressive changes in the office. This public service culture naturally includes preventing crime, supporting victims, and holding offenders accountable. To reduce recidivism, we have emphasized robust therapeutic courts: drug court, veterans court, and a relatively new mental health court, so services are provided to those with substance abuse or behavioral health issues. We are also expanding juvenile diversion programs to provide services to juveniles earlier in the process. Given that the U.S. incarceration rate has quadrupled since 1980 and a majority of offenders will reoffend within three years of release, it's clear that more needs to be done to reduce recidivism, including prison and post-prison programs.

We are succeeding in our mission when crime is going down, which it is in Pierce County, and when we are making substantive reforms in the system, which we are doing in Pierce County.

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 hired a professional firm to work with our leadership team on diversity, equity, and inclusion issues. Though there was initial resistance, we have made progress and are expanding the training to rank and file deputy prosecutors.

Additionally, we have made our leadership team more diverse by moving away from seniority-based promotions toward merit-based promotions, and by actively recruiting diverse candidates so our office better reflects and serves the community we represent. Again, there was some resistance to the move away from seniority-based promotions, but it is increasingly accepted now and opens the door to a more diverse leadership team.

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?

Data indicates that cash bail discriminates against the poor and people of color. In Pierce County, we are using a risk assessment tool to reduce the number of defendants held in pre-trial detention, but we still have a cash bail system as well.

I have studied California Senate Bill 10, which eliminates cash bail, and will be watching how it works in practice. I am an active member of the legislative committee for the Washington Association of Prosecuting Attorneys and this issue is on our 2019 agenda. Defendants in Washington have a Constitutional right to bail, so this will have to be taken into account by any reform effort. I support reforming the current system so that it is more based on measurable risk and less based on cash and quick calls from judges.

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, I support cross-training and coordination. Much as we raised awareness of equity issues in our office through professional training, I believe we can raise awareness of equity issues specific to those with intellectual or developmental disabilities through partnerships. Further, I strongly support community-based responses for a number of reasons, including the fact that the first hurdle is often attitudes of community members toward the disabled based on a lack of knowledge.

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?

As previously noted, I support robust therapeutic courts and we have expanded ours in Pierce County. That said, there are some drug crimes, manufacturing methamphetamine for example, where a combination of prison time and treatment, such as a DOSA sentence, is just and in the best interests of the community.

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?

As mentioned, we are leaders in using Mental Health Court as well as Drug Court and Veterans Court to divert those with substance abuse and behavioral health issues out of traditional prosecution and into services.

Prostitution

In 2011, King County and the City of Seattle launched Law Enforcement Assisted Diversion (LEAD), the first known pre-arrest 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?

I've discussed this with King County Prosecutor Dan Satterberg and our staff is considering doing something similar in Pierce County. We are already treating those arrested for prostitution as victims in need of services and support rather than defendants in need of punishment and incarceration. We work with non-profits in Pierce to steer the victims of sex trafficking toward services and support.

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?

While I believe risk assessment tools are an improvement over cash bail, which so obviously discriminates against poor people and people of color, I recognize that potential dangers of bias in risk assessment tools. As mentioned, we are studying the implementation of these in California. We are also monitoring our own risk assessment tool in Pierce County. This risk assessment tool, I should note, is primarily controlled by the judges. I agree it needs to be carefully monitored and adjusted as necessary.

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?

We are already using the authority of SB 6550. Our default position is to send juveniles to diversion for first, second, or third offenses, and beyond, depending on circumstances. Additionally, as mentioned, we are providing services to juveniles as early as possible in the process, including pre-charging so they can stay out of the system. We have dramatically reduced juvenile incarceration in Pierce County. We average 20-25 juveniles in detention. We would like more resources and we would like to see our partners in the community have more resources to properly support juveniles.

Reentry

The Washington State Institute for Public Policy released a 2017 report detailing the effectiveness of several existing programs in combatting 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?

Our office is always looking for new and innovative ways to achieve justice and fairness in the justice system. Reentry is one of the riddles of the criminal justice system. Depending on the stats you read, a majority of offenders are going to reoffend within three years. We have to do better, obviously. Here is one example or reentry innovation I sometimes talk about: in Brazil, for every book a prisoner reads, 4 days is subtracted from their jail sentence. This has reduced recidivism. I think it's a brilliant idea. Studies have shown that reading increases empathy. Lack of empathy is one of the traits underlying criminal conduct. Encouraging reading is, of course, just one idea. We need many more innovative ideas. I believe in trying new ideas and measuring what works. Footnote: I am a writer as well as a Prosecutor and so I'm heavily pro-reading.

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?

We vigorously prosecute hate crimes that occur in Pierce County. Furthermore, we publicize this intent because we want to send a message. Again, we want the community to know what we are doing and why.

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 longstanding 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?

We treat cases individually to achieve just results for the defendants, their families, and the community. We do consider immigration consequences. If you check with advocates for immigrants in Pierce County, I am confident you will find that we work well with them to ensure just outcomes for immigrant families and their families.