



October 2, 2018

American Civil Liberties Union of Washington
901 5th Ave #630
Seattle, WA 98164

Dear ACLU-WA and partner organizations,

Thank you for providing me the opportunity to respond to your candidate questionnaire. I wholeheartedly agree that it is in the best interests of our community to know where our elected Prosecuting Attorneys stand on important issues—regardless of whether they face opposition in their elections.

I believe I will be an outstanding Snohomish County Prosecuting Attorney. My long experience as a criminal Deputy Prosecuting Attorney, my community advocacy on behalf of children and families, and my background growing up in our state's foster care system gives me a unique perspective on the criminal justice system and an unwavering commitment to bettering our communities.

I have dedicated my life to public service and am honored to have the opportunity to continue my service in an elected role.

Please do not hesitate to contact me if you have further questions about my answers to the questions in the attached questionnaire or wish to speak with me about what I believe in, and what I hope to accomplish in my new role.

Gratefully,



Adam Cornell

Candidate for Snohomish County Prosecutor

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?**

Providing a framework for accountability, criminal justice system metrics can enhance public safety and public confidence. I support efforts to fund a performance measurement initiative that holds the Prosecutor's Office accountable for outcomes it has control over, but I also support expanding its scope to other criminal justice stakeholders within Snohomish County and beyond.

Broadly, metrics for success within my office would relate to the efficiency and fairness of our work and the outcomes we produce. Specifically, external metrics could, for example, involve measuring the following: adequate access to justice for victims of crime; timeliness of case decisions and case resolutions; procedural and substantive fairness to victims and the accused, and accountability for offender conduct; and public confidence in the office among law and justice partners and citizens. Internal metrics could involve measuring the following: effective recruitment and retention of diverse and uncompromisingly ethical and technically proficient staff; availability of clear and transparent performance expectations and accountability of the office's leadership team—including the Prosecuting Attorney—to help employees exceed stated goals; and overall level of job satisfaction among office employees.

Indicators as set forth above should be value-based, be able to be independently verified or measured, be easy to understand, be publicly available, and include benchmarks for success. Crucial to implementing a framework for accountability is to have funding support from our County Executive and councilmembers or to obtain funding by other means. I would be a strong and persuasive voice of support for realigning local, state, and federal budget appropriations to create safer and more livable communities for everyone in Snohomish County. My long experience as a Snohomish County resident, my work as a criminal Deputy Prosecuting Attorney in Snohomish County, my community advocacy on behalf of children and families, and my background growing up in our state's foster care system gives me a unique perspective on the criminal justice system and an unwavering commitment to bettering our communities. Drawing on my experience, I would do the following:

Preventing Crime—While outside of the traditional scope of the work of the Prosecutor's Office, community-based programs that support all children, families, and communities, but particularly those on the margins, can be very effective at crime prevention. Similarly, providing early and robust support to our mentally ill—including those with substance use disorder—could also go a long way toward preventing crime. Finally, supports to prevent recidivism for those returning to the community from jail

or prison are important. Addressing the root causes of not only why people commit crimes, but also what leads people to be victims of crimes is an approach that I support.

Providing Crime Victims What They Need—First, my office needs more crime victim advocates and better training for them. Burgeoning caseloads for our advocates and inadequate training could compromise our ability to meet our obligations to crime victims. Public funding should be increased in this area. Second, for many victims of crime in Snohomish County, English is not their first language. Advocates in my office regularly must use a telephone language line to communicate with victims who are not proficient in English. The impersonal nature of this communication, especially at a time of crisis or trauma, is not fair to victims. Public funding for in-person interpreters should be increased. Third, the provision of transportation for many crime victims prevents them from fully participating in their cases. Here again, an increase in public funding is necessary. Finally, because many crime victims suffer from mental illness, greater community and criminal justice system support for them is also needed.

Holding People Accountable for the Harms They Cause—An offender who committed an offense can only be sufficiently held accountable when a Prosecutor's Office is fully staffed and sufficiently trained. Offender accountability often takes the form of a conviction, but not always so. Deputy Prosecuting Attorneys (hereinafter DPAs) and staff should be aware and have at their disposal alternative justice programs and exercise their discretion, where appropriate, in recommending and agreeing to these programs.

Preventing Recidivism—Offering offenders who are committed to remaining crime-free once they have served their sentence the provision of educational, occupational and other services within and outside of the institution would go a long way towards reducing recidivism. Programs and policies that foster an offender's connections to family, address the underlying causes of criminal conduct, and further his or her understanding of the harm caused to victims will also serve to prevent recidivism. The If Project, a Seattle-based non-profit, is an example of an outstanding program that serves to prevent recidivism and help reentering inmates transition into the community as healthy, thoughtful, and crime-free taxpaying citizens.

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?

I will promote equity, diversity, and inclusion within my office and will hold my staff to the highest ethical standards in the screening, filing, and prosecution of cases, and in their conduct with one another and with members of the community. To that end, I support bias training for supervisors and line staff to assure that victims, witnesses, the accused, and others are treated with fairness and respect, and that justice is discharged impartially. Regarding trial practice, I will require more specific training on Supreme Court General Rule 37 so that DPAs conduct jury selection in a manner consistent with fundamental fairness to all interested parties, including prospective jurors and the accused.

More broadly, I am committed to continuing to engage with communities of color and other traditionally underrepresented groups and to better understand my own implicit biases through training

and community engagement. My long participation on the Juvenile Court Cultural Awareness Committee has already provided me valuable insight into issues around equity, diversity, and inclusion, but I have more to do. Finally, I will be a Prosecutor who seeks community input and listens to members of our community to help me comprehend the structural biases inherent in the criminal justice system and more broadly in our society.

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?

We need a fairer system of pretrial release. In many circumstances, the high costs to taxpayers of pretrial incarceration have diminishing returns to public safety, particularly regarding low-level offenders who may pose little risk of non-appearance or risk to the community, but who cannot afford even nominal bail. Further, it is worth considering the downstream costs of pretrial detention to the offender and the community when balanced against the need to detain on bail. Finally, for many of these offenders who have served much more than their sentence at the time of their eventual release, there must be a better way. One option worthy of consideration is the full or partial elimination of cash bail.

I am committed to continuing to learn more about bail reform, and to work collaboratively with stakeholders to create a more equitable bail system. Considering the tumult around California’s recent bail reform efforts and the complex nature of reform, policy makers should first consider a pilot project in a county or two to see what works best instead of wholesale, statewide change. The determination of the proper jurisdiction for a pilot project should be a county where statistics establish the need. Bipartisan bail reform measures in Kentucky and New Jersey would be instructive to Washington State efforts, as would California’s attempts.

While the current system of cash bail needs to be reformed in some way, those efforts will take time. For the time being and continuing even after reform of some kind takes hold in Washington State, an effective way to assure equity in pretrial detention is to have thoughtful and well-trained deputy prosecuting attorneys exercising their prosecutorial discretion when considering whether bail, if any, should be requested. While mindful and respectful of the role of judges in imposing bail and conditions of release, it has been my experience that judges often follow the recommendations of prosecutors. Clear and consistent policies by prosecutor’s offices with regards to the request for detention or release—including victim rights groups input—could go a long way toward greater equity and fairness. Similarly, better training for judges in this area could also be of benefit.

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?

Greater understanding of the complex challenges faced by those with physical, intellectual, and other developmental disabilities is critical to ensuring equity in the criminal justice system. I support cross-training and coordination among law and justice partners and others to achieve this goal. As a DPA, I was a trainer for Snohomish County's Crisis Intervention Training (hereinafter CIT). The CIT curriculum included content concerning those with intellectual disabilities, but certainly could be enhanced to focus more on this population. I will continue to work to promote cooperation and coordination in this area.

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 should be treated primarily as a public health threat and focus on harm reduction. While the decision to de-criminalize the possession of illegal drugs rests with the legislature, prosecutors should exercise thoughtful discretion in the review of crimes concerning the illegal possession of personal use amounts of drugs. I have long supported therapeutic courts in my county and will continue to do so as Prosecutor. Currently, absent a very rare exception (i.e. the possession of Fentanyl), my office does not prosecute people for the possession of two grams or less of a controlled substance. I am committed to a thorough review of this policy that includes all relevant stakeholders to determine if it should remain or be modified in some way. It is obvious to me that we cannot arrest or prosecute our way out of the drug problem. Nevertheless, I believe incentives provided by alternative courts have been incredibly successful in motivating people to get better and live crime-free.

For those who are charged with certain felony crimes where there is a nexus between the crime and substance use disorder, I have supported and will continue to support our felony Drug Court, Mental Health Court, and Therapeutic Alternatives to Prosecution (hereinafter TAP) program. These programs focus on the provision of treatment for the offender while assuring restitution is paid to the victim. Aside from the benefit of sobriety to the defendant and its downstream effects to the community, he or she will also have their case dismissed or diverted entirely depending on the program.

Should people who do not suffer from substance use disorder face criminal penalties for the possession of personal use amounts of controlled substances? As mentioned above, my office does not currently charge for the possession of less than two grams of a controlled substance (except for the possession of

Fentanyl). For the recreational drug user, as more particularly discussed below, the anticipated creation of a Felony Diversion program could provide an opportunity to avoid traditional prosecution.

While I have yet to take office, the current elected Prosecutor has given me the authority to negotiate my office's 2019 budget with the County Executive and County Council. As part of this process, I have requested funding for a new position to support a Felony Diversion program. For a qualifying offender, the program will provide a second chance to avoid some felony convictions and make a victim whole through the payment of restitution. It is obvious that the downstream effects of a felony conviction can be adverse not only to the offender, but his or her family, and to the community. I am grateful that the County Executive has included this program in his budget proposal, and I am optimistic that the County Council will pass this budget item.

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 have long supported programs that offer alternatives to arrest, prosecution, and incarceration for those with mental illness and I will continue to do so as Prosecutor. For many with mental illness, where appropriate, the ends of public safety and public health are better served with treatment and community-based services as opposed to costly incarceration and competency restoration services. I have been directly involved in supporting the expansion of my county's Mental Health Court, Competency Diversion Program, TAP program, and proposed Community Court Program.

For approximately three years I was the Lead DPA assigned to the Snohomish County District Court Mental Health Court team. As the assigned prosecutor, I worked to expand the program in many ways, including by agreeing to the reduction of some lower-level felony charges to gross misdemeanors so that qualified offenders could benefit from the program. I was also an outspoken advocate for the program among law and justice partners.

While serving as the Mental Health Court Lead DPA, I worked with the Director of the Snohomish County Public Defender's Office to support the creation of the Snohomish County Competency Diversion Program. This program—which was recently discontinued due to a lack of grant funding—benefitted the community and those with profound mental illness by providing the provision of housing and mental health services to eligible felony offenders who were unlikely to ever become competent to stand trial. Qualifying offenders had their felony charge or charges dismissed and instead received community-based services.

I have also supported my office's TAP program and hope to expand it when elected. TAP-eligible offenders are charged with certain felony offenses and have a nexus to a diagnosable mental illness. A successful participant will avoid a felony conviction.

Snohomish County is in the exploratory stages of adopting a Community Court program modeled primarily on the City of Spokane's program. I have been involved with the Sheriff, Executive's office, and

others in fact finding and discussion with county stakeholders and others. I am hopeful that, upon further investigation, the program will fit the needs of Snohomish County and provide yet another alternative to costly arrest, incarceration, and prosecution for qualifying offenders.

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?

I support LEAD, but it is worth noting that for years my office has rarely, if ever, prosecuted prostituted persons. As more particularly stated in my answers to other questions in this questionnaire, an approach that addresses the root causes of criminal conduct and provides lower-risk offenders a chance at diversion and or rehabilitation is in the community's best interest. For prostituted persons, who are often at the margins of society and victims themselves, LEAD can be a ray of hope.

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?

Pretrial risk-assessment tools are only as good as the data on which they rely. I would not recommend a risk-assessment tool without knowing that its calculation formulas and processes were bias free. Assured that it is free of racial, gender, and other biases, I would likely support a risk-assessment tool, but not to the exclusion of other means, including victim impact information. It would be inconsistent with fundamental fairness to the accused, victims, and other interested parties for judges and prosecutors to abdicate their discretion to a computer program. A risk-assessment tool should be reliable, effective, and fair. The ideal tool would be software that rates its effectiveness.

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?

As a member of the Snohomish County Juvenile Court Cultural Awareness Committee, I have already been involved in discussions concerning the implementation of SB 6550. The expanded authority of SB 6550 is consistent with the Juvenile Justice Act in its primary focus on rehabilitation as opposed to punishment. My office already supports juvenile court diversion for certain felony and misdemeanor crimes and I will continue to do so as Prosecutor. As implementation efforts continue in collaboration with the court, probation department, defense bar, and others, I intend to be mindful of the effect that all crimes—particularly more serious felony charges and convictions—have on respondents, victims of crimes, and their families.

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?

Reentry programs within the ambit of the Prosecutor's Office direct impact is limited in comparison to the constellation of services that exist in the community. Nevertheless, I will be a voice of support for those programs in my office controls, as well as programs that effectively address the unacceptably high level of recidivism in our state. Alternative prosecution programs discussed in my answers elsewhere in this questionnaire, as well as First Time Offender, Parent Offender Sentencing Alternative, and Drug Offender Sentencing Alternatives options are worthy of consideration where appropriate. Additionally, as Prosecutor, I would encourage my staff to think creatively about sentencing recommendations that address the long term needs of the offender—and his or her family—to reduce recidivism as well as being mindful of victim impact considerations.

Currently serving as a Trustee of the Edmonds Community College Foundation, I am proud of the Foundation's long support of programs at the Monroe Correctional Complex that address the provision of educational services, including a full associates degree program, to its inmates. Education is a critical component to successful reentry. I am also proud to support programs like the If Project, a Seattle-based non-profit, that is doing innovative work in prisons and in the community to address reentry.

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 prosecuted hate crimes as a DPA. Notably, in one hate crimes case, I litigated a motion to dismiss the charge—Malicious Harassment—based on a defense challenge that the racial epithets hurled at the victim as he was being assaulted were protected speech under the First Amendment to the U.S. Constitution. I persuaded the court to deny the motion to dismiss. As a consequence of prevailing at the motion hearing, the defendant in the case pleaded guilty as charged and was held accountable for his hate crime.

When supported by the facts and the law, those motivated by hate towards their victim should be prosecuted and held accountable. As Prosecutor, I will be a voice of support for tolerance, understanding, and inclusion among our citizens. I will speak out against hate and any violence—physical or otherwise—associated with it. I will also make sure my staff are well trained in identifying and addressing hate crimes for viable prosecution.

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?

Prosecutors should give informed consideration to collateral consequences to defendants when determining appropriate charges or contemplating a sentence recommendation. Generally, an unjust immigration impact will flow from a less serious offense. Currently, my office's charging and disposition standards do not explicitly contemplate consideration of immigration consequences. Nevertheless, I am committed to considering—in collaboration with others in my office as well as other stakeholders—a modification of our standards to explicitly include immigration consequences. If I were to modify our charging and disposition standards to contemplate the consideration of immigration consequences, any modification would require verified information concerning the effects of the charge or sentence on the offender's immigration status. Further, immigration mitigation consideration would not include those charged with violent felonies, sexual assault offenses, or repeat violent felony offenders. Finally, victim input, where applicable, would be important in the decisional calculus as would be the offender's willingness to pay any restitution.