

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?

Many Prosecutor's offices use the conviction rate as the main metric. This is a terrible metric if one is attempting to measure whether the prosecutor is actually preventing or affecting crime.

I propose success should be based upon the following:

- a) Be smart on crime.

As prosecutors, I believe that we owe a duty to the public to cease the process of running cases through the system like a mill. We need to evaluate each case on a case by case basis attempting to determine whether to charge the case, divert the case, try the case, or dispose of it by other means. This is very difficult to do, but can be done if one is objective, compassionate, and sets the goal of truly trying to help all people and the community as opposed to simply punish the community.

I believe that the more people that we can identify and determine the reasons they are offending, or re-offending, then the better we can address those reasons directly. This shall not only reduce recidivism but prevent crime overall.

- b) Raise Charging Standards.

Once again, the mill approach is too lackadaisical and does not lead to just results. Prosecutors must charge only the crimes that were committed, and when choosing to even charge those crimes, first determine, whether prosecution is even worth pursuing. I believe we need to also ask whether the public is benefited before we prosecute any case.

- c) Encourage Diversion.

Not only should we encourage discretion, we should encourage prosecutors to use discretion and/or diversion whenever diversion will lead to correcting behavior and eradicating recidivism. It is more humane, cheaper, and better for our community as a whole.

- d) Encourage Discretion not to Prosecute.

Prosecutors should not be scared to dismiss cases. If there is no benefit to the public or community from prosecution, why prosecute?

Of course, common sense dictates that violent offenses, murders, rapes, and other crimes that by law a prosecutor cannot divert, will be charged and tried.

But cases that can be resolved without prosecution should be.

e) Create Independent Review.

I intend on creating a prosecutorial integrity unit. This unit will receive letters from any inmates in the State. We will review any case that has been disposed of already to ensure that the conviction has integrity. If it does not, we will immediately remedy the situation.

i) Justify Prosecutions.

In my former jurisdictions, a prosecutor had a duty to dismiss any case that was not supported by probable cause. I will not charge and I will dismiss any case that is not supported by probable cause. In addition, any prosecution that does not benefit the public will not be prosecuted. All serious offenses will be prosecuted.

j) Collect Data on Prosecutorial Decision Making.

Once elected, my office will track all offenses and collect data based upon offenses and re-offenders. We will attempt to track any methods that work, and any methods that do not so as to attempt to develop a framework that actually cures crime.

2. Prevent crime in the First Place.

I am to employ a boot on the ground approach partnering with law enforcement, public education, non-profits, housing agencies, behavioral health agencies, and any other agency entity, or person that wants to contribute to the attempt to eradicate crime prior to it occurring. Mentorship programs, volunteer programs, summer work, camps, anything we can employ or do to keep young people and persons engaged in community will help to improve the community.

Provide crime victims what they need,

Once convicted, my office will focus every effort to not only make the victim whole economically, but also spiritually. I firmly believe in restorative justice programs as they are proven to help the victims empower themselves and they help defendants understand. Victims often need counseling and I think we can do more to partner with groups to ensure that counseling is available.

3. Provide Victims What they Need

We will continue to utilize victim/witness services, but I want to attempt to do all possible to empower victims to move past victimization. Restorative justice programs assist victims as much as they help defendants. They also build relationship which is the foundation of community. I would also like to increase funding to help victims rebuild their lives and heal from injuries. Counseling and therapy is often needed and not offered as well, but should be a part of the healing process.

4. Hold people accountable for the harms they cause

Restorative justice programs and other community based programs assist defendant's in appreciating the consequences of their actions so they can correct the behavior themselves. It works because the defendant is not forced, but volunteers. Programs that educate and teach defendants tend to yield data that clearly demonstrates they reduce recidivism, while simultaneously holding defendants accountable.

Incarceration is a timeout, but rarely teaches accountability. Restorative justice forces the defendant to deal with their emotions and ideas when confronted by a victim. This is scary but causes both the defendant and victim to learn and grow. It works. Of course, there is very little restoration or alternatives for people who commit violent or heinous offenses such as murder. Unfortunately, incarceration is merited for those serious offenses. But, even while incarcerated, cognitive behavioral therapy, restorative justice, and literacy programs should help reduce recidivism.

5. Bring recidivism rates down as close as possible to zero.

Surge on major crimes and hot spots, ensure that finite resources are delivered to the most important law enforcement priorities, promote fairer enforcement of the laws and alleviate disparate impacts of the criminal system, strengthen protections for vulnerable populations, bolster reentry efforts, provide education, training, and mentorship, find alternative means to prosecution in juvenile cases and attempt to change their environment, peers, and thinking, reserve bail for only cases where it is merited, and use science driven programs and models that work to reduce recidivism.

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 will not tolerate any bias in prosecution. To eliminate bias we will attempt to employ trainings and education that attempts to recognize and eliminate bias.

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?

A novel idea would be asking for bails that truly are only ordered to ensure risk of flight is minimized and harm to the community is minimized. I practiced in Washington, DC and Maryland for many years. Both jurisdictions funded and implemented pretrial services years ago. It is proven that supervision pending trial reduces the likelihood of reoffending and ensures the person will appear for court appearances. In addition, Washington, DC does not, and has not had bail for thirty years.

I will immediately encourage the Courts, County Commissioners, and the private investors to invest in a pretrial services division. Until this is funded, I will PR as many people as

possible while attempting to create realistic conditions that can my office can easily monitor and that are based on science and are proven to work to ensure that people are not held pending trial simply because they cannot afford bail.

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?

If someone is found competent, but they still suffer intellectual disability, this should absolutely be taken into account when recommending a remedy to the court. We will exercise our discretion when prosecuting the person and in recommending a sentence.

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?

We will decline to prosecute any first time small amount possession drug offender if they can demonstrate they are enrolled in treatment by the time the individual is arraigned. Also we will do all we can to divert any drug cases where the individual wants help and is SERIOUS about sobriety. We will also attempt to obtain as many resources for addicted offenders. We will continue to utilize our drug court but it currently is only offered for convicted offenders. We will also attempt to get the Courts to create a diversion drug court for first time offenders.

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?

We will encourage and petition the courts to begin a Mental Health Court that addresses dual diagnosis as well as any other mental health problems and issues. In the meantime, we will use cognitive behavioral therapy and any other means through local providers that are willing to volunteer as a means to assist offenders.

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?

This approach was much needed and we will attempt to employ the same methods in order to assist the low level offenders stop using and prostituting, while focusing on the bigger drug dealers human traffickers.

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 don't think artificial intelligence functions well enough to be employed in criminal prosecutions yet. Therefore, I object to their use, and do not know of any type of risk assessment tools being utilized in Okanogan County at this time. Besides, Okanogan County can't afford law enforcement vehicles, let alone AI.

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 will fully employ SB 6550 diverting as many juveniles as possible. We will also partner with the community to combat truancy, teen pregnancy, and drug use. We will begin a youth court, governed and run by youth, so they can learn civics and empower themselves. We will also partner with schools for teachers to volunteer with youth court, and we will partner with schools to attempt utilize any resource possible to ensure the child is assisted.

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?

Bail should be reserved only for those that are a risk of harm to the community and wife. Most other defendants should be released and monitored pending trial. Employ as many therapeutic courts as possible. Begin literacy and job training programs 9 months to one year prior to release back into the community and while released in community custody provide literacy and job training programs to provide confidence to the individual as they embark on reentry. I would also like to start a group with persons who are going through reentry to assist and empower each other. Attempt to change an offenders thinking, environment, and their peers through the criminal system and many people will rehabilitate. Prosecutors cannot do this alone; we need community too.

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 need to build more community and relationship and I plan on being very active. The office will take all hate crimes very seriously and will use the existing laws to ensure that hate crimes are minimized through aggressive 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?

We will absolutely treat all immigrants the same as we treat citizens that are being prosecuted. A person should not face deportation for being an addict or driving a vehicle while suspended. However, we will not give an immigrant a better diversion option than a citizen solely because the person is an immigrant and their conviction may affect their status. This would be unfair and unequal to our citizens. With that said, if there is a way to correct the person's behavior without conviction, I believe this is our best option as it will make sure that the immigrant can still be productive and part of our community.