

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?

Prevent crime in the first place;
Provide crime victims what they need;
Hold people accountable for the harms they cause; and
Bring recidivism rates down as close as possible to zero?

Whatcom County has had the same leadership in the Prosecutor's Office for 44 years—and it shows. Not only do we have an incarceration rate above the state average, we've also failed to implement modern policies that would address the goals listed above.

Our current Whatcom Prosecuting Office has done a poor job following up with victims, and the staff have repeatedly made mistakes that lead to convictions being overturned on appeal. When victims are brave enough to come forward, Whatcom County must support them and ensure a fair and just outcome. I'll make it a priority to protect victims and eliminate the mistakes and lack of urgency that cause them to lose faith in our justice system.

As a Prosecutor in Florida's 10th Judicial Circuit, I prosecuted people who committed the sexually motivated crimes against children. I believe in holding people accountable—and when people commit violent crimes and serious offenses, then it the prosecutor's duty to hold those offenders accountable and protect our communities. However, and importantly, we also need to make real changes to how we approach non-violent offenses and less serious crimes including increasing access to alternative courts.

I would change our spending priorities and I wouldn't be afraid to ask for additional funding when we need it which our current leadership County Prosecutor's Office has not done. I would be open to new programs and I believe we must quickly adopt the effective strategies that have been recommended by Whatcom County's Incarceration Prevention and Reduction Task Force including, for example, expanded use of electronic home monitoring in lieu of pre-trial detention to safely reduce the jail population.

I would invest to expand access to the county's therapeutic drug court and mental health court, so that we can give people the support they need and reduce our jail population. I'd also invest in updating the Prosecutor's computer systems (they currently date back to the 1980's) and in creating an improved notification system so people get reminders about upcoming court dates to reduce the number of warrants issued when people fail to appear for a court hearing.

These are just a few examples of the potential reforms that I am excited to make. I am an experienced attorney with a fresh perspective as an outside to the office and a modern approach to criminal justice. It is past time that we bring the prosecutor's office into the 21st Century.

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 need to make significant changes to address implicit bias and discrimination in our County Prosecuting Office. We should start with our hiring practices—right now, the staff at the Prosecutor's Office does not reflect the diversity of our community and women are underrepresented as well—that's completely unacceptable.

Bias in our policing, prosecuting, and criminal justice system as a whole is a real problem across our country and Whatcom is not an exception. The Washington State Supreme Court recently overturned a conviction in a case my opponent tried because he asked the court to remove a juror with evidence of actual bias. Justice McCloud wrote a concurring opinion in which she and the concurring justices inferred that his decision was rooted in bias.

I would mandate training for every staff member in the prosecutor's office to address and reduce implicit bias in our criminal justice system, and I would also encourage an open door policy between the Prosecutor's Office and community groups of color, so we can make it clear that we're listening to the issues they're facing and can be held accountable when we don't make improvements. We will also invest in the technology tools needed to gather data around these issues that we can use to make improvements.

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?

If elected I will take significant steps to reduce the influence of bail in our legal system. My first priority will be to request a list of the inmate in jail on Whatcom County charges with the bail amount and the pending charges. We will schedule immediate bail reviews for every person who is being detained on a pre-trial basis for a non-violent offense because of their inability to pay bail.

The prosecutor's bail recommendations in Whatcom County are entirely subjective. Things like race, wealth, and implicit bias can have real effects on what recommendations are made—not everyone is treated equally. People often find themselves held on bail they can't afford to pay, even if they haven't committed a serious or violent crime, and feel forced to plead guilty, including those who are actually innocent.

Given the issues stemming from cash bail, I think we must consider eliminating it, and introducing new solutions that reduce pretrial detention, treat people of all backgrounds equally, and allow nonviolent offenders to go home. However, we must be extremely careful about how we accomplish this task so that it does not lead to unintended consequences. For example, we do not want a system where traditionally targeted minority populations are held without bail because they are viewed as a safety or flight risk.

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 disabilities are entitled to fair and equal treatment in our justice system. I'm committed to working with affected people and advocacy groups to identify where our issues are and how we can improve. I think the Prosecutor's Office can and should take the lead coordinating between these various organizations, developing a comprehensive plan to ensure people with developmental disabilities get the support they need.

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?

No, I do not believe that peoples suffering with substance abuse disorder should face criminal penalties for having a health problem. We do not arrest people because they have diabetes or cancer. Whatcom County continues to charge people with felonies when they are arrested in possession of trace amounts of controlled substances. This practice needs to stop immediately. My opponent, however, wants to charge these crimes as felonies and reduce them to misdemeanors. That is not good enough. If elected, I will exercise my prosecutorial discretion to not file criminal charges in residue cases.

We also need to increase access to Whatcom County's therapeutic drug court. Drug courts work well where the prosecutor is a truly a part of the team approach. We have a drug court in Whatcom County that has been historically under-utilized by the current leadership in the office. We need to increase access to the program, streamline the application process, and ensure that our approach meets nationally accepted best practices. Ensuring that we meet best practices will make our county eligible for grant funding to make the program even better. We need additional funding and resources so that we're not turning away people who would greatly benefit from access to this successful program.

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?

Like Whatcom's drug courts, I believe our mental health courts must be used more often. It is a real problem that we do not have enough mental health treatment facilities and beds. There just aren't enough resources to support all the people in our community that currently need help. As Prosecutor, I'll work with other stakeholders and community members, in our office and on interdisciplinary teams, to increase access to community-based mental health treatment. We will work to remove obstacles that keep people from receiving needed treatment in our community. I'll advocate for investments of Whatcom's Mental Health Tax toward expanded facilities and new programs that will improve accessibility of treatment.

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 think this is a fantastic approach, and one of my top priorities would be to establish a similar program in Whatcom County. The only reason that we do not have one today is because of a failure of the current leadership in the current Prosecutor's Office to update its approach to criminal justice. The current leadership in the office reviewed and rejected the concept of a LEAD program.

If elected, I will work with other stakeholders in our program to establish a similar program for Whatcom County. We must do more to divert people from jail and to help them get back on their feet, rather than punishing them for substance abuse disorder, mental illness, or other situations outside their control.

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 believe using data and technology can help us make better, more informed, more objective decisions. For example, we need to accurately collect data to better understand where we're making mistakes and where our reforms are working. However, automated decision-making is not without risks as identified above.

The evidence following the implementation of these tools has shown that they cannot eliminate, and may even exacerbate, some of the biases in the system. While it is possible that an automated tool could further exacerbate the challenges the Whatcom Prosecuting Office already has with implicit bias and similar issues, the Whatcom County Superior Court Judges are currently leading an effort to adopt a pre-trial risk assessment to better inform their decisions about pre-trial release.

I do believe that we make better decisions when we use data, and that we can work to ensure that these tools do not make the current problems with bail, sentencing, supervision decisions worse. We absolutely cannot just adopt one of these tools and blindly allow it to make decisions for us. The prosecutor must continue to exercise his or her discretion around bail, sentencing, and supervision decisions. However, the prosecutor's discretion must be informed so that it is not based on any explicit or implicit bias.

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?

I am glad that Prosecutors in our state now have expanded authority to address and reform juvenile criminal justice. The last thing we should be focused on is locking up children and young adults in need. If elected, I'll ensure our focus is on guidance programs that divert kids from crime and set them up for a successful future.

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?

We spend a disproportionate amount of time, effort, and energy ensuring that people are punished for their criminal behavior. We need to recalibrate to ensure that people who commit a crime do not forever forfeit the right to be productive members of our communities. If we invest more in rehabilitation and re-entry programs, then people who leave jails and prisons after completing their sentence won't be back because they'll have received the help and guidance they need. But, unless we do a good job allowing them to reenter society, find good work, and get their life back, reducing recidivism is unlikely.

We must carefully evaluate the reentry programs that we're currently using to see if they're working, if

they can be expanded, or if they need to be changed. In addition to looking at data, I'll also talk with people who have been involved with these programs including past participants who have succeeded in societal reentry and those who have returned to jail, to determine what they found effective and what must be improved.

I'm always interested in new practices and innovative measures—I will work with other prosecutors in our state and around the country to look for new methods and opportunities to make positive changes to our criminal justice system. My door will always be open to individuals and organizations with new ideas, as I believe we must work together as a community to ensure we're creating real reform.

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?

Hate crimes are unacceptable. I would mandate that our office prosecute individuals who commit hate crimes. There can be no room for hate in our community—and we need to make it clear to victims and our communities that we are on the right side of justice. Victims of hate crime must feel comfortable reporting the abuse they face. They must trust that they will be protected by our laws and that perpetrators will be held accountable.

I'm proud to be endorsed by Equal Rights Washington. I believe that elected officials need to be leaders in our communities, especially when it comes to welcoming immigrants, minority groups, LGBTQ+ people, and all those who face discrimination. If elected, I will continue to stand as a proud ally with those communities and work towards ensuring a justice system that is truly fair and just for all.

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?

Neither the County Prosecutor nor local law enforcement agencies have the jurisdiction or the responsibility to enforce federal immigration laws or unconstitutional policies and practices related to immigration. Every member of our community must feel safe reporting crime when it occurs. As a former prosecutor in a jurisdiction with a large immigrant community, I have seen firsthand that crime, and sometimes serious crime, will go unreported where community members do not feel safe asking for help. This makes communities less safe and it is unacceptable.

I don't believe people should be deported for low-level crimes and small mistakes—that's not right. I will ensure that the staff in the prosecutor's office consider the potential immigration consequences of a criminal charge before they make a charging decision in any case involving an immigrant. We must also provide immigrants improved resources and support whenever they encounter our criminal justice system (as defendants, victims, and witnesses), to ensure that they have fair and equitable access to justice.