

North Carolina District Attorney Candidate Questionnaire

As part of our organizations' effort to reduce the state prison population while combatting racial disparities in the criminal justice system, the ACLU of North Carolina and the Carolina Justice Policy Center are interested in engaging with North Carolina's district attorneys. Our goal is to educate voters, and those who have been impacted by the justice system, about the influence that district attorneys can have on policies that reduce or fuel mass incarceration.

We would like to provide voters with information about where candidates for district attorney across our state stand on critical criminal justice reforms, such as prosecutorial transparency, reducing incarceration, eliminating racial disparities in the criminal justice system, and ending the death penalty.

All candidates for district attorney in North Carolina are receiving this questionnaire. Responses will be made publicly available in an effort to hold candidates accountable to their communities' fundamental need for justice, safety, and respect.

Please write your answers in this document and email your responses to Susanna Birdsong at sbirdsong@acluofnc.org on or before April 17, 2018.

Responses may also be mailed to:

ACLU of North Carolina
PO Box 28004
Raleigh, NC 27611

Mission and Vision

1. Will you pledge to articulate a mission and vision for the Office that places the focus on justice, rather than winning cases, and align the work of the Office—including internal and external communications, training, policies, and hiring and promotion practices—to reflect that mission and vision? Please give a clear “Yes” or “No” and any explanation.

Yes. We need to shift the focus from convictions to consequences and reform. Convictions have permanent, life-altering consequences. Worse still are the collateral consequences of convictions could be reduced or even eliminated by expanding the use of deferred prosecutions, diversion programs, and other alternatives to traditional prosecution. The focus needs to be on the appropriate consequences for a person’s conduct, rather than just attaining the conviction. To get there, we need to embrace and expand prosecutorial alternatives, particularly diversion programs and deferrals. Convictions are often necessary, but they should not be the only tool prosecutors use.

Mass Incarceration

2. Do you agree that prosecutors’ practices have contributed significantly to mass incarceration? Please give a clear “Yes” or “No” and any explanation.

Yes. Across the nation, the prosecutorial mantra seems to be “convict, convict, convict.” This mindset is an immediate result of the war on drugs and the era of “law and Order.” Durham and other NC counties have made efforts to expand alternatives to traditional conviction and jail sentences. However, we can still go much further.

3. Many experts say prosecutors overcharging defendants even when they have weak or insufficient evidence unfairly pressures defendants into taking pleas. Would you pledge only to file charges that you are confident the evidence supports? Please give a clear “Yes” or “No” and any explanation.

Yes. As a career defense attorney, I’ve seen this practice employed by a number of D.A.’s offices in the area, including Durham. I would agree that Defendants often face charges far more severe than their conduct warrants. The charges often originate with an arresting officer or law enforcement official. However, excessive charges often remain in place in order to obtain an easier conviction on the lesser charge. As District Attorney, I would require A.D.A.s to adjust charges to reflect what is factually plausible, not theoretically provable.

4. Contact with the criminal justice system can negatively affect a person’s psychological wellbeing and ability to obtain employment; it also often fails to address the underlying cause of crime. Will you work to expand diversionary programs so that, whenever possible, contact with the criminal justice system is avoided or limited? Please give a clear “Yes” or “No” and any explanation.

Yes. Durham is one of only a few counties in the State that offer a variety of diversion options for individuals facing conviction. These can and should be expanded. For instance, the Durham D.A.’s Office just raised the age limit on the misdemeanor diversion program to 24. I believe it should be available to all individuals facing the first misdemeanor, and even extended to those facing a second or third under certain circumstances. Someone that’s 56 and facing the first a misdemeanor charge of their life should not be barred from the same diversionary option that another individual would have simply because they are younger. I do recognize we have to work with law enforcement and other groups to raise this age, and am committed to doing so.

Racial Disparities

5. Will you commit to tracking and working to eliminate any racial disparities caused by decisions made by the Office, including disparities in charging decisions, bail recommendations, diversion program placements, and plea bargains? Please give a clear “Yes” or “No” and any explanation.

Yes. I would require myself, the A.D.A.s, and office staff to undergo racial equity training so that racial disparities can be identified, corrected and eliminated.

6. A prosecutor’s subconscious and unintentional attitudes about other people based on characteristics such as race often influences the outcome of a case. Will you commit to requiring prosecutors in your district to participate in implicit bias training to reduce the influence of these views in the prosecution of cases?

Yes. See above.

Poverty Penalties and Bail Reform

7. Do you favor changes at the state level to eliminate the use of monetary payment, or “cash bail,” as a condition of pretrial release? Please give a clear “Yes” or “No” and any explanation.

Not entirely. I do favor the elimination of cash bail for nonviolent misdemeanors and other crimes that would require a bond of \$5,000 or less. No person should sit in just because they are too poor. The reason why I answer “not entirely” stems from the purpose of cash bond: to ensure attendance in court and to protect the community from an individual who may pose a threat. If cash bond is necessary, I would require the A.D.A.s to offer proof at a bond hearing that the individual facing charges and a cash bond is either a flight risk, that they pose a safety risk to the individuals in their life or the greater community, or both. Otherwise, I believe that nonviolent crimes and crimes without human victims (crimes against the state, like possession of marijuana) should not have cash bonds.

8. Will you limit requests for money bail and pledge to recommend, for all legally permissible cases, presumptive release of defendants without financial conditions unless there is an individualized showing of substantial and identifiable flight risk or danger to the community? Please give a clear “Yes” or “No” and any explanation.

Yes. As stated above, nonviolent crimes and crimes without a human victim should not generally require cash bonds. Even those crimes that do have human or corporate victims should only receive cash bonds under that rarest of circumstances. For instance, I believe it is inappropriate for a person to sit in jail on a cash bond for shoplifting from the grocery store.

9. Will you commit to searching for alternative, less costly diversion programs that will lessen the financial burden on individuals? Please give a clear “Yes” or “No” and any explanation.

Yes. The diversion programs already in place offer wonderful opportunities and access to resources for those that most need them, but are not themselves deserving of a conviction. These and other similar programs should be expanded and developed to accommodate more individuals and a wider variety of conduct.

Transparency and Accountability

10. Will you pledge to collect and post online annual statistical information disaggregated by race and gender on felony and misdemeanor charging decisions, convictions, declinations, and diversion program placements? Please give a clear “Yes” or “No” and any explanation.

Yes. These statistics are largely in the domain of the NC Administrative Office of the Courts. As D.A., I would advocate for their release in a public format that is easily digestible based on community identity, makeup, and crime.

11. Will you pledge to publish on the Office website all policies, protocols, and MOUs regarding prosecution guidelines, police-involved incidents, bail recommendations, fines and fees, diversion programs, plea bargains, civil asset forfeiture, immigration considerations, and indigency determinations? Please give a clear “Yes” or “No” and any explanation.

Yes. I will make these public to the extent the District Attorney’s Office has any involvement in setting policies. The District Attorney’s Office has no role in some of the items on the list, such as civil asset forfeiture or indigency determination.

12. Will you pledge to develop and implement a plan to personally, regularly and meaningfully engage and communicate with your community, including communities of color, immigrant communities, community-based organizations and criminal justice reform advocates, and involve them in determining the priorities of your office within the first 100 days of your term? Please give a clear “Yes” or “No” and any explanation.

Yes. The Durham District Attorney is a community figure, and as such, should place a community role. I would create a series of discussions or forums whereby citizens could attend and learn more about the office, the judicial system, and the means and modes of prosecution here in Durham.

13. Will you ensure that every stage of the criminal process is clearly communicated to victims in plain language? Please give a clear “Yes” or “No” and any explanation.

Yes. It is easy to remove the victim from their own conflict. This happens with alarming frequency. It is the State’s responsibility to prosecute individuals for harms done to the members of our community, namely the victims that report crimes done to them, family, or friends. This responsibility carries with it the power to include the victim and make them feel whole and protected. I would require routine and regular victim contact at every stage of the prosecution of a defendant. In addition, I would make sure that we inform non-English speaking victims of their right to have state-provided interpreters for court proceedings so that they can fully understand what is going on.

14. Will you pledge to assign special prosecutors authorized to investigate and prosecute police killings of civilians, use-of-force cases, sexual assault by law enforcement officers, and other cases of police misconduct as appropriate? Please give a clear “Yes” or “No” and any explanation.

No. I think it would be inappropriate for prosecutors from the Durham D.A.’s office to investigate and prosecute Durham law enforcement officer accused or charged with any of the above serious offenses. I would instead require all claims and allegations to be investigated and prosecuted by an outside state agency such as the State Bureau of Investigation and the Attorney General’s office.

15. Will you pledge to recruit and hire people with criminal records to work in the District Attorney’s Office? Please give a clear “Yes” or “No” and any explanation.

Generally, No. I would not actively recruit prosecutors with criminal records to work in the D.A.’s office. To do so would create a conflict of interest in cases where, for example, an A.D.A. with a DWI conviction is prosecuting an individual for a DWI. However, I would not disqualify a candidate simply because they have a criminal conviction. Naturally, this depends on the conviction and the circumstances leading up to the conviction. In my private practice, my current paralegal/office manager is a former client who I met while representing her. We got her into treatment for an addiction issue. She did have to serve some active time, but she turned her life around and her experience with the system and with addiction has been invaluable in dealing with clients and helping them understand what’s going on. I believe that having support staff with that experience could be beneficial to the office and to the community.

Immigration

16. To protect immigrant crime victims, will you pledge to adopt and promote a written U Visa policy that includes a rebuttable presumption of helpfulness and the direction that U Visa certifications be completed regardless of whether charges were brought, a conviction was achieved, or the case has concluded? Please give a clear “Yes” or “No” and any explanation.

Yes. I believe we do need to expand the policy, to the extent Federal Law allows, and would follow a rebuttable presumption of helpfulness. A lot of the determination would be on willingness to help/cooperate, and not just on the outcome of the case.

Youth Justice

17. Will you pledge to not seek to remove juveniles to the adult justice system, unless required by statute? Please give a clear “Yes” or “No” and any explanation.

Yes. The age component of the Juvenile Justice Reinvestment Act goes into effect on December 1, 2019. However, it is within the D.A.s power to adopt its principles and rationales earlier. I would do this. Let’s call juveniles what they are: kids. Kids should not be prosecuted as adults unless under the most serious of circumstances (murder, rape, armed robbery). I would look to expand deferral and diversion options for individuals charged with offenses that would be covered under the age increase (misdemeanors and H and I felonies) so that they can get the benefit of the new legislation, but for being born a year too early.

18. Will you pledge to require, when possible, that juvenile trauma histories be considered at all points in the process when evaluating whether a youth should be incarcerated, diverted, or subject to other dispositions? Please give a clear “Yes” or “No” and any explanation.

Yes. We need to look at the whole image of a kid’s misconduct, not just the present charge. It’s bad enough when a fifteen or sixteen year old finds themselves on the wrong side of a courtroom. But if the State must pursue action, we need to embrace the opportunity to address the root causes of crime and offer our resources to address that cause.

Discovery

19. Will you pledge to require that prosecutors turn over full discovery to the defense pre-indictment? Please give a clear “Yes” or “No” and any explanation.

No. However, I would implement a mandatory discovery program in District Court. In our District Courts, defense attorneys currently have to request vital discovery and case information, such as police reports. When these requests are often approved, it still requires attorneys to ask and pick up such information. Occasionally, the reports are not released until the case is called for trial. This could be solved with one simple policy change: automatically provide police reports to the Defendants and their attorneys. This would also prevent individuals with cash bonds from sitting in jail for weeks only to discover that there is missing evidence, and that they’ve been sitting in jail for no reason at all. In effect, this would be a *pre-indictment* discovery system. However, I answer “No” because there are times when an indictment will be obtained without charges pending in district court. In those cases, the “pre-indictment” stages would be better classified as the investigation.

20. Do you currently require—and if not, will you implement—Brady training for your prosecutors, which specifically addresses evidence considered exculpatory or that otherwise qualifies as Brady materials? Please give a clear “Yes” or “No” and any explanation.

Yes, if elected. Durham’s A.D.A.s are well-aware of the *Brady* principles. In my experience, they follow these guidelines. However, as proposed in No. 19, I would implement mandatory discovery in our District Courts. So, in that capacity, I would simply want to ensure that the information being offered to attorneys and defendants in District Court is done so in a manner that respects *Brady*.

21. Do you currently have—and if not, will you commit to creating—a process to address willful discovery violations, including Brady violations, by prosecutors in your office? Please give a clear “Yes” or “No” and any explanation.

Yes, if elected.

Death Penalty

22. Will you commit to not seeking the death penalty? Please give a clear “Yes” or “No” and any explanation.

Yes. Simply put, the State should not be in the business of killing people.

Please write your answers in this document and email your responses to Susanna Birdsong at sbirdsong@acluofnc.org on or before **April 17, 2018**.

Responses may also be mailed to:

ACLU

North Carolina

ACLU of North Carolina

PO Box 28004

Raleigh, NC 27611

C A R O L I N A

JUSTICE POLICY CENTER