

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

I believe my tenure as DA has proven that we are not an office that focuses on winning cases. I think this is manifested in our charging decisions and our negotiations in the normal course of business. I also am the DA under which the misdemeanor diversion program started. I am the DA that helped develop and implement a deferral mental health court. I am also the first DA in Durham under which restorative justice pleas began including the first major felony case to be disposed through restorative justice in the state. We also created an amnesty day that to date has restored the licenses of 458 people through the dismissal of over 2100 cases through no cost to the defendant.

No

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

No

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

Currently it is our policy and my expectation that prosecutors in our office only indict felonies that they are convinced they prove and that is otherwise appropriately disposed of as felonies. I do recognize that circumstances in cases change and that mistakes in analysis are made. When those circumstances change decisions are made to appropriately fit the current circumstance.

No

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

Our misdemeanor diversion program is an example of addressing underlying causes of crime. That is a program that I have been trying to convince law enforcement to agree to expand.

No

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

No

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

I have received implicit racial bias training and half the prosecutors on the staff have also received the training. I will continue to require my prosecutors who have yet to receive the training to receive it as though opportunities become available.

No

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.

Yes

No

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

Currently, it is our practice to ask for a secured bond only when there are identifiable reasons for danger to the community.

No

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

Our misdemeanor diversion program is offered at no cost to the defendant. Though our mental health court is a deferral court, it also is offered at no cost the defendant which includes no cost for the treatment and no court costs.

No

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

No

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

No

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

Currently I regularly meet with several community-based organizations although there is no formal plan or policy. I am willing to create a specific plan.

No

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

We endeavor to provide that service currently

No

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.

Yes

No

If the option becomes available in the future to appoint a special prosecutor in these types of cases, I will make this pledge. The reason I cannot make this pledge is because we do not have the ability to appoint special prosecutors in this state. We can ask the Attorney General’s Office to prosecute a case but they will not accept the prosecution unless there is a legal conflict of interest. We can also ask another DA’s Office to prosecute a case as special prosecutor, but the discretion is completely theirs as to whether or not to accept prosecution. I have asked the AG’s Office and other DA’s Offices to accept prosecution of cases that have been denied. If I could appoint or have a special prosecutor appointed to prosecute use of force cases, I would.

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.

Yes

No

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

Currently we are very active in signing applications for U-Visas

No

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

No

During my tenure as District Attorney, two juveniles have been transferred to Superior Court when their transfer was not required. In each case the juveniles had upwards of 14 violent crime victims spread out through separate incidents. For each juveniles their cases included several robberies with firearms, attempted homicides and cases with victims with gunshot wounds.

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

No

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.

Yes

No

I have no problem with giving discovery pre-indictment; however it is impracticable or impossible in some situations. Sometimes charges are initiated by indictment and sometimes indictments are sought within a business day or two of the charge. There are times, particularly in homicides, when an indictment is sought a few days before an attorney is appointed to the defendant.

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

It is currently our policy to turn over all discovery, exculpatory or not.

No

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

I currently do not have a specific policy but I will commit to the creation of one.

No

Death Penalty

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

Yes

No

There were 3 pending death penalty cases when I took office and I removed the death penalty from consideration in all of them. There has not been a capital prosecution in Durham since 1997. In 20 years as a prosecutor I have never proceeded on a case capitally. The death penalty should only be considered in the most egregious and heinous cases. N.C.G.S. §15A-832(f) required that the DA’s Office offer the victim’s family the opportunity to share their views with the prosecuting attorney about the disposition of the case including plea or negotiations and sentencing. I interpret that section to require the DA to give an opportunity for feedback on the decision to seek or not seek the death penalty even though there is absolutely no requirement to follow the family’s wishes.

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