

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

When I began in the DA's office a decade ago, my predecessors instilled the importance of seeking justice for victims of crime and not to keep score as we fought for those victims. I have lead teams of prosecutors, and instilled within them the same values. Our job is not to keep score, but to seek justice and truth.

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

Prosecutors, as did every single constituency in our criminal justice system, contributed significantly to mass incarceration. The national war on drugs, which criminalized addiction rather than treating it as an illness, increased mass incarcerations. As working-class neighborhoods in Charlotte and nationwide were severely impacted by violence associated with the drug trade, state and national legislatures reacted responded with increased sentences without addressing underlying health crises.

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

My first responsibility as a prosecutor is to determine if there is sufficient evidence and probable cause to proceed with criminal charges against someone accused of a crime. Before accepting a case for prosecution in my office, a review of the available evidence must demonstrate a reasonable likelihood of success at trial.

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 DA’s office already uses diversionary programs to give people second chances and meet their demonstrated need with resources. Since taking office, I have already removed a previously existing restriction that makes admission to diversion programs contingent on the ability to pay restitution. I will make sure that value is applied to all diversion programs we offer.

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

Understanding that structural racism has shaped much about our criminal justice system, I have committed to work with institutions that focus on implicit bias in the court system. We plan to invite scholars to examine our practices and policies to unearth structures that may contribute to racial disparities. Once we identify such practices, we can begin the work of reforming structures and creating a system the community can trust.

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

Mecklenburg prosecutors have been leaders in designing systems to address implicit bias internally. Bias trainings have led to actual changes in the courtroom, where our prosecutors are now commonly observed explicitly raising issues of race in jury selection. Such measures are designed to steer jurors toward verdicts based on evidence instead of implicit racial stereotypes. One of our best weapons against bias is a more inclusive workforce of attorneys and legal assistants. A diverse community like Mecklenburg County needs an equally diverse team of prosecutors working to maintain justice and public safety. I have led and will continue to lead the efforts in the DA’s office to hire staff that reflects the community.

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

I have supported, and will continue to support, measures that reduce our reliance on bail policies that use money as a vehicle for valuing risk of community harm or flight. I am working with other courthouse partners (judges, defense attorneys, clerks) to develop meaningful first appearance settings, where the defendant has access to counsel.

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

I will encourage prosecutors only to ask for secured bonds when able to articulate risk of harm to the community and likelihood of flight.

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

I have publicly committed to making sure we have diversion options available to all, without reference to ability to pay.

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

I believe this kind of data is extraordinarily helpful and advances transparency, but in the absence of a true case management system, it is not plausible to collect this information.

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

I have and will post-guidelines regarding policies involving officer-involved shooting reviews, and I will be transparent about diversion offerings from the DA’s Office. Nevertheless, publication regarding “guidelines” on plea bargains and bail recommendations invites strict adherence to letter of policy as opposed to larger values that should motivate a prosecutor’s review of facts, evidence and the law on each and every case. I will commit to being wholly transparent about the values we apply in the prosecution of cases.

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

I have already begun this work by visiting community organizations as well as inviting members of the community, such as clergy, returning citizens, and immigrant advocates, into my office to discuss areas of concern and coordination. I am committed to creating a DA's office that addresses the community demand for safety and justice and actively engages with partners to build and sustain trust.

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

This is our current policy. Victims may not like what they will hear from us, but myself and my staff will always tell them the truth.

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

I have already created a specialized Violent Crimes Team and a Special Victims Team that has expertise and experience in prosecuting these types of cases, and not just ones involving law enforcement officers.

No

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

Admittedly, there may be some restrictions imposed by external certifying authorities in reference to access to some files and information, but it is a personal value of mine that people should be defined by their demonstration of talent and character, not by a past and distant mistake.

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

I am a strong supporter of U-Visas. They are critical to seeking justice for victims of crime, especially our most vulnerable undocumented residents. The current policy I have adopted was devised in coordination with local immigration advocates and attorneys. We have a memorandum of understanding with local law enforcement that if a U-visa is sought before charges were filed, law enforcement will consider the U-visa certification. If charges are filed, which in North Carolina initiates the District Attorney's role in a case, the DA's Office will consider the certification. Conviction has never been a requirement for certification, nor has closure of the case been a requirement.

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

I would exercise great caution before opting to seek a severe prison sentence against someone under the age of 18, or before seeking transfer for 16 and 17 year olds in serious but non-capital offenses. I am not generally inclined to proceed with either possibility, but I will not set a blanket policy against either. Instead, I will consider every such case in light of the facts and circumstances known, understanding the conditions that weigh against transfer for someone under the age of majority. With the implementation of Raise the Age (RTA), I have and will continue to support a reverse transfer provision for juveniles whose cases are sent to adult court as serious felonies, only to be later determined in fact or disposition as lesser charges.

No

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

Prosecutors in my office are encouraged to consider seriously the youthful status of the juvenile, as well as other mitigating factors (like trauma histories), at each stage of the process.

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

In all candor, it is extremely rare for a prosecutor to be in possession of any discovery pre-indictment. In Mecklenburg County, we adhere to an administrative case management system administered by a trial court administrator, which features measures designed to ensure full discovery is provided well in advance of arraignment.

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

While Brady is strongly emphasized already, I have plans to implement a structured training to new prosecutors who operate in our District Court. Our more seasoned prosecutors who work in our Superior Court demonstrate a strong command of Brady, in addition to abiding by a clear expectation they comply with all statutory obligations. For younger attorneys who work in District Court, where there are no statutory discovery obligations, it is even more important to emphasize Brady discovery duties.

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

Far beyond adhering to a Brady standard, the Mecklenburg District Attorney’s Office honored an “open-file” discovery policy long before it was codified into statute. A willful discovery violation is both an ethical and criminal offense, and it has not and will not be tolerated by the Mecklenburg District Attorney.

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

While I would anticipate only rarely seeking the death penalty, if at all, I will not commit to blanket refusal to seek it. While I do believe there are compelling reasons for reexamining capital punishment, I believe that determination is best made by our General Assembly. I will consider invitations to examine previously imposed death sentences where substantial evidence is presented regarding a newly determined mitigating circumstance that should reasonably have changed an original determination to seek the death penalty.

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