

2018 Candidate Questionnaire on Criminal Justice Issues Facing the District

The following questionnaire was developed by the ACLU-DC, CARECEN, HIPS, No Justice No Pride, Stop Police Terror Project DC, and Trans United Fund.

Please email your responses to [REDACTED] on or before May 31, 2018.

School-to-prison pipeline/Juvenile Justice

- 1. Black students in the District are 7.7. times more likely to receive an out-of-school suspension than their white peers. There is a wealth of evidence that the practice of suspensions and expulsions sets up students to fail by shutting them out of an education, decreasing their likelihood of graduating, and increasing their likelihood of interaction with the criminal justice system. This is the “school-to-prison pipeline.” What steps do you think the District should take to address the school-to-prison pipeline?**

I have instituted several successful reforms to maintain the safety of District residents while prioritizing keeping nonviolent youth offenders out of the criminal justice system so that they have a better chance to live safe, productive and successful lives. Informed by data on what works to promote these goals, OAG ended the blanket practice of juvenile shackling in court proceedings, increased diversions of low-level juvenile offenders to the ACE (Alternatives to the Court Experience) program; launched a restorative justice program using trained, in-house staff; launched a pilot anti-truancy program and prioritized other initiatives to keep students in school, launched an initiative to combat human trafficking. In addition, I have used my position to highlight District youth who have overcome significant challenges and are showing self-improvement through OAG’s annual Right Direction Awards. I am committed to creatively building on this public-health, prevention-focused approach to reducing youth crime and breaking the school-to-prison pipeline.

- 2. According to “Beyond the Walls,” a recent report by the Georgetown Juvenile Justice Initiative and Rights4Girls, while overall youth involvement in the criminal justice system has declined, the rate of girls entering the juvenile justice system has steadily increased and, in D.C., black girls are significantly overrepresented. What are your recommendations for addressing the specific drivers of the increasing rates of girls in D.C.’s juvenile justice system?**

We need to face and treat the reasons girls are increasingly involved in the criminal justice system, especially trauma that may be connected to physical and sexual abuse. We need to do a better job of providing mental and behavioral health services for girls, with a special emphasis on trafficking victims. In addition, we should continue to increase the use of diversion programs, especially for such status offenses as running away from home and other persons-in-need-of-supervision violations. The Office of the Attorney General has in the past three-plus years has stepped up its fight against trafficking, and my

office is working closely with the D.C. Superior Court on the HOPE Court pilot program for trafficking victims.

A driving factor in the school-to-prison pipeline is the increasing reliance on police rather than teachers, administrators, and counselors to maintain discipline in schools, increasing the likelihood that students are subjected to school-based arrests. Currently, there are over 100 “school resource officers” (SROs) working in District schools. In addition to SROs, the ratio of security staff to students in D.C. schools is 1:114, while the ratio of social workers/counselors is 1:283 students. Do you support shifting resources from security and police presence in schools to social workers? Why or why not?

Yes, because the presence of law enforcement officers can lead to immediate escalation and turn ordinary disciplinary problems that could be addressed in a variety of ways into criminal matters. I have long advocated for more services, particularly mental health services, to be provided to our young people. Too many District young people experience trauma, and when trauma goes untreated, it can lead to behavioral problems and other issues later in life. In addition to boosting the availability of counselors skilled in addressing youth emotional trauma, we should encourage schools to adopt alternatives, including restorative justice, that focus on building empathy and addressing the harms caused by certain types of behavior. The restorative justice program we have in the Office of the Attorney General is a successful model that we would want to work with the Office of the State Superintendent of Education to expand.

3. In FY 2016, D.C.’s Department of Youth Rehabilitative Services (DYRS) placed 26% of committed youth in facilities outside the District, not including New Beginnings Youth Development Center, the secure residential facility operated by DYRS in Laurel, Md. Many of these youth were committed to facilities as far flung as Texas and Illinois. How would you ensure all committed youth remain close to the District?

Unfortunately, OAG has no control over where young people are placed once they are convicted and committed to DYRS. Certain facilities can provide certain types of specialized services. It is always our preference to keep young people – and all incarcerated residents – as close to the District as possible in order to maintain family and community ties that would be central to successful rehabilitation; the exception would be cases where a young person requires a treatment for specific issues or a level of intensive supervision that facilities closer to the District are unable to provide.

Police Practices

1. In D.C., decisions to acquire and use surveillance technologies and military equipment are made in secret by the police department without any input from the public or their elected officials. In addition to being acquired in secret, these technologies are used without any community input or oversight. To date, seven other jurisdictions, most recently Oakland, Calif., have passed legislation requiring city council approval before any law enforcement entity funds, acquires, or uses any military or surveillance equipment,

and only after the public is given a full and fair opportunity to voice its opinions before the council. Do you support the District enacting such a law here, and how do you view the role of the Office of Attorney General in addressing transparency and accountability in police use of surveillance technology?

No. I do firmly believe in transparency and accountability as a major way to build trust between police and the community. As Attorney General, my job is to counsel District agencies to comport themselves in accordance with the Constitution and relevant federal and District law. With respect to the purchase and use of military-style and surveillance equipment, my office will evaluate the legality of policing techniques using this equipment. I regularly meet with the Metropolitan Police Department, as well as other District agencies, and raise concerns about the legality of their actions. A core part of that process is understanding community law enforcement concerns and relaying those concerns to the appropriate agencies. In that regard, I would look forward to hearing the concerns of the ACLU and its partners on this issue.

- 2. A recent report by the Office of Police Complaints on Use of Force by the Metropolitan Police Department found that use of force complaints in FY2017 increased by 36% over the previous year, and that since 2013, 90% of all uses of force were against black residents, even as black residents make up 48% of the population. How do you view the responsibility of elected officials in ensuring that local law enforcement operate in a manner that protects the rights of D.C. residents, and what would you do to address the significant racial disparity in MPD's use of force?**

As both a prosecutor and as the attorney charged with defending the District, I and the staff of the OAG work closely with the MPD to ensure that every District resident is treated with dignity and respect. I have pushed for continued education on police de-escalation tactics and support continuing work on implicit bias. I consider addressing use-of-force disparities in policing a key part of the advocacy work I have been doing more broadly to address racial disparities in the criminal justice system.

- 3. D.C. recently launched a pre-arrest diversion program through an interagency collaboration between the Department of Behavioral Health, the Metropolitan Police Department, and the Department of Human Services. Unfortunately, the agencies did not seek community input or guidance before developing the program. What role do you believe community stakeholders should play in the implementation of a pre-arrest diversion program?**

I consider community input to be crucial. A core principle of mine is that programs should be evidence-based and succeed at increasing safety and fairness for all, and that is critically important in diversion programs that seek to change the culture around criminal justice and rehabilitation. In that process we should be ensuring that community concerns are heard and addressed.

- 4. Trans communities of color are among the most likely to experience police violence and misconduct; however, the role of gender is rarely discussed in the context of police**

brutality. How will you use your position to promote public-health and community-led approaches to community safety that consider the role of race and gender discrimination?

The role of gender and gender identity should not be “rarely discussed”; it should be top-of-mind given the disparate impact you have raised. My office will continue to press for equality and respect for all of our residents, and advocate for respect and inclusion for transgender and gender-nonconforming people in the District. As we continue implementing the SAFE Act, we will keep advocating for addressing the particular needs and concerns of trans people in the context of our overall work to promote a public-health approach to criminal justice.

Crimmigration

1. Do you support the Access to Justice for Immigrants Act of 2017, which would expand access to justice for D.C.'s documented and undocumented residents by creating a separate civil immigration legal services program?

As an immigrant myself and a person who is deeply engaged with District immigrant communities, I strongly support measures, adequately funded, that ensure that immigrants have access to the same level of legal assistance they need as every other District resident. OAG provided the legal guidance that enabled the administration to establish its existing immigrant legal services program without congressional interference and will continue to defend it.

2. What steps would you take to ensure that the Office of Attorney General consistently takes into consideration the immigration consequences of arresting and/or convicting people at risk of deportation?

I am acutely mindful of the heightened fears immigrants have around deportation, especially given the policies implemented by the Trump administration. My office has vigorously defended the District's status as a sanctuary city and its right not to use its local police as a deportation force. While we do not have jurisdiction over adult felonies – that rests with the U.S. Attorney's office – we do have responsibility for juvenile prosecution, and our emphasis on keeping nonviolent offenders out of the criminal justice system minimizes the opportunity that an immigrant family would be placed at risk of deportation because of the juvenile's actions.

3. D.C. considers itself a “Sanctuary City.” However, according to their policy and procedures, the D.C. Department of Corrections complies with U.S. Immigration and Customs Enforcement (ICE) notification requests. Specifically, when an inmate has an ICE detainer lodged against him/her, the DOC will notify ICE 48 hours prior to the expiration of their sentence, and in instances where an inmate is being released pursuant to a court order, DOC will notify ICE immediately to inform them that the inmate is being processed for release. Do you support closing the loopholes which allow for D.C. DOC to inform and notify ICE regarding the residency and release of inmates? Why or why not?

Of course I support changing this process. However, this process is a consequence of D.C.'s criminal justice system being tied up in the federal system. For this to change, D.C. would need to gain control of our entire criminal justice system, with the authority over adult prosecutions in the Office of the Attorney General, as is true in other states.

D.C. Jail/Incarceration

- 1. D.C. eliminated money bail in 1992. However, a significant percentage of the people held in the D.C. jail are detained pretrial, often for lengthy periods of time. What would you do to reduce D.C.'s jail population?**

I am an advocate for community-based supervision to maximum extent possible outside the D.C. jail. I support this because the evidence shows that community-based supervision and support can keep the community safe and begin the process of rehabilitation and successful reentry without supervision.

- 2. The population makeup of the D.C. jail is over 90% black, even though black residents make up only 48% of D.C.'s population. What would you do to reduce this disparity?**

What we are already doing is rooted in preventing youths from entering the criminal justice system in the first place, and setting them up to become responsible adults. Our diversion programs seek to teach young people values such as empathy, encourage them to stay in school and off the streets, and give them the support they need to deal with the traumas that come with racism and economic disadvantage. I also intend to use my office to promote economic opportunity for communities of color; when we successfully lead in negotiating deals like the Alta Gas/Washington Gas merger agreement that leads to more jobs in underserved communities, that means more opportunities for people to economically prosper as law-abiding citizens. I have been a fierce advocate on the local and national stage for addressing the roots of racial disparities throughout the criminal justice system, and I will continue to do so, partnering with other reform-minded attorneys general.

- 3. Will you decline to prosecute low-level offenses committed by people who pose no harm or threat to the community?**

Yes. I believe that young people should always be held responsible for their actions, but in addressing nonviolent youth offenses, we already emphasize diversion programs and other alternatives to traditional prosecution, including ACE (Alternatives to the Court Experience), restorative justice, drug treatment courts and trafficking courts. We are looking to build upon our success in this area by expanding our restorative justice program to 18- to 24-year-olds via a memorandum of understanding with the U.S. Attorney's Office.

- 4. The Department of Corrections reports that people who are re-incarcerated within a year after their release have a significantly higher incidence of mental illness. However, D.C.'s Department of Behavioral Health has repeatedly maintained that the justice-involved consumers of mental health services are just too small a percentage of the population the department serves to be a priority. What would you do to ensure people with mental illness who are justice-involved are a priority in our systems?**

We need to make sure returning citizens have what they need to come back into the community and succeed. Mental health care, addiction treatment and related services are critical to rehabilitation and to reducing recidivism. I will continue to be a champion for making sure that returning citizens have easily accessible and adequately funded mental health services, and will work closely with the U.S. Attorney and city agencies to ensure those services are adequate to the need.

- 5. As of April 2018, 4,679 D.C. residents were incarcerated in federal prisons as far away as Washington state, California, Texas, and Florida. This distance isolates those incarcerated from the support systems of family, friends, and local rehabilitative services that research shows is critical to successful re-entry. Do you support D.C. bringing people back from the Federal Bureau of Prisons system and, if so, how would you propose the District accomplish this?**

Yes. We need incarcerated people in close proximity to their families and communities in order to maintain ties and support successful re-entry. I will encourage the construction of a new D.C. jail within the District with a from-day-one emphasis on rehabilitation and effective transition back into the community. That jail should be built in the most effective and efficient manner that produces results fair to taxpayers, but that would likely be a city-financed (rather than privately financed) project, and certainly not privately run after it is built.

- 6. A 2015 report by the Washington Lawyers Committee for Civil Rights and Urban Affairs described the conditions of the D.C. Jail as “Damaged. Moldy. Crumbling. Infested with vermin. Smelling of sewage. Completely unconcerned with inmate safety.” While incarcerated people, advocates, and the government are in general agreement that the conditions at the D.C. Jail are unacceptable and unhealthy, there is no consensus as to the process, timeline, and method of financing for the replacement of the jail. What considerations do you believe should inform the replacement of the D.C. Jail and what steps would you take to address the current conditions faced by inmates and those who work in the facility?**

The District jail should be a state-of-the-art facility within the city’s borders focused on rehabilitation and transition back into the community starting on day one. The OAG would advise the Department of Corrections on the conditions necessary to ensure that the new jail is compliant with applicable law regarding the treatment of inmates and can accommodate the wrap-around services that inmates require for successful re-entry into the community.

Reentry/Returning Citizens

- 1. Several other jurisdictions have taken steps to remove the criminal conviction records of people who were arrested on marijuana-related charges prior to**

legalization/decriminalization. Most recently, Seattle's mayor and city attorney announced plans to vacate all misdemeanor marijuana possession convictions that were prosecuted before it was legalized in Washington state in 2012. Do you support a similar move in the District?

The District would be in a meaningful position to debate this if the District had full autonomy over its criminal statutes regarding marijuana, as do other states. However, without statehood, the District is at the mercy of federal policy and congressional intervention. That said, I support in principle removing impediments that prevent nonviolent offenders from being fully and productively engaged in the community.

2. Do you support the Removing Barriers to Occupational Licensing Amendment Act of 2017 (B22-0523), which would restrict the ways in which criminal records can be considered by occupational licensing boards?

Yes. This legislation is consistent with my core principle that our criminal justice system should be focused on successful reentry into the community and eliminating the conditions, such as a lack of economic opportunity, that promote recidivism.

Criminalization of Poverty

1. The trans community, and particularly trans people of color, face a disproportionate level of violence, discrimination, homelessness and unemployment in D.C. Nearly half of homeless youth in D.C. identifying as LGBTQ, while 50% of trans Washingtonians live in extreme poverty, with a median income of \$10,000. How would you use your position to address these issues?

I and my office is strongly committed to LGBTQ inclusion and to fighting discrimination wherever it occurs. In our work with young people, we have supported organizations like Check-It in Southeast, and have partnered with groups such as SMYAL that have specific expertise in working with LGBTQ youth. My work in fighting for workforce development, jobs for disadvantaged populations, and affordable housing that complies fully with the city's nondiscrimination laws is intended to open doors of economic opportunity and dignity that trans people have every right to walk through, and I am committed to using my office in any way possible to make sure they can. Finally, my office stood against the transgender military ban called for by the Trump administration and for the right of trans people to use the restroom facilities that conform to their gender identity.

2. Smart Justice means placing less emphasis on criminalizing conduct and a greater focus on directing resources to address the underlying problems, like substance abuse, mental health issues, and lack of stable housing. If you are elected, what concrete steps will you take to move away from a criminalization approach to a public safety approach to criminal justice?

We are already doing this within the juvenile system through the ACE program, our restorative justice work, our anti-truancy program, and our child support work. I believe that the District government should provide adequate resources to the appropriate agencies and follow a case-management model to provide wrap-around services, from the time offenders enter the criminal justice system through their re-entry into the community. That's what we press each time we appear before the City Council to discuss our operations and our budget. We need to do a better job coordinating services and cutting through the existing bureaucracy, because our community is safer and stronger when nonviolent juveniles are kept out of the school-to-prison pipeline and when people who have returned from incarceration are successful. We also need to document our successes and learn from our mistakes, so that we are actually delivering on the promise of a reformed criminal justice system that is more just, more fair, and makes our communities safer.

D.C. Criminal Code Reform

- 1. The "Reducing Criminalization to Promote Public Safety and Health Amendment Act of 2017," would remove criminal penalties for consensual sex work among adults in the District and would create a task force to study the effects of the law and make recommendations for further public health interventions. Do you support this bill? Why or why not?**

We need to see evidence that this proposal does not produce unintended consequences, such as leaving young people more vulnerable to sex trafficking. Careful study should precede any action.

- 2. One of the major barriers to reducing the overcriminalization and mass incarceration of D.C. residents is D.C.'s bifurcated criminal justice system. All federal offenses, adult felony offenses and some misdemeanors are prosecuted by a federally appointed U.S. Attorney, and the federal government also exerts control over parole decisions, probation, and supervision for those convicted of crimes in the District. However, District officials do have control over the D.C. criminal code, and arrests for crimes contained in the code are largely carried out by the Metropolitan Police Department. With the above limitations, what changes would you suggest to reduce the high number of D.C. residents who are charged, convicted, and imprisoned each year?**

This question correctly addresses an issue that is best moved toward resolution by the District having the same criminal justice system that every other state has. That said, rewriting elements of the criminal code as a way to address mass incarceration needs careful consultation with the communities affected by crime. By all means, the city should build upon the experience that our office has with reforming the juvenile justice system based on a public health model that addresses the trauma and other conditions that lead to crime. As evidence mounts that these programs work in the District and around the country, I will use my bully pulpit to influence federal policy. That, combined with the work my office does to safeguard District residents' access to good jobs at fair wages, affordable housing and a fair deal in the economy, will go a long way towards reducing incarceration in the District.

3. The “Fare Evasion Decriminalization Act of 2017” would replace criminal penalties for fare evasion in the District with a civil fine. Do you support this bill, and would you support the decriminalization of other low-level offenses like eating on the Metro? Why or why not?

Fare evasion often serves as a gateway into the criminal justice system, and I have a concern about introducing people into the criminal justice system for offenses that can be dealt with outside of that system. I support measures that keep Metro safe and clean for its riders, and I believe we can do that without resorting to discredited “broken windows” tactics. I would add that such moves should be carefully considered and based on the best evidence of what works.

4. Do you support reforming D.C. sentencing guidelines to reduce recommended sentencing ranges for certain crimes in the District?

Yes, in the context of what the evidence shows us with regard to sentencing practices that not only move us away from mass incarceration but also maintain community safety. In that regard, changes to sentencing guidelines need to be considered in a context that includes all of the systemic changes that are demanded by a public-health approach to rehabilitation and re-entry.

5. How would you address sentencing disparities that lead to black and Latino offenders facing significantly greater odds of incarceration than similarly situated white offenders?

Clearly systemic racism is at work here, but we need more data to better understand the underlying factors and how to change the mechanisms that lead to these disparities, including the implicit bias of judges. Reorienting the criminal justice system so that the primary goal is not the length of time served but the readiness to reenter society as a positive contributor should compel judges to consider offenders as individuals, not as members of a particular race or class.

6. Do you support the removal of mandatory minimums? Why or why not?

Yes. I believe that judicial discretion in sentencing is an appropriate check and balance against the power of the prosecution and assures that defendants have the full right of counsel. Mandatory minimums prevent judges from considering the individual circumstances surrounding a charge, and have too often led to absurd outcomes that do not serve the interests of justice.