2019 Travis County Attorney Candidate Accountability Questionnaire

Local and state prosecutors hold extraordinary power in the criminal justice system. How they exercise discretion at each stage of criminal proceedings—from initial charging decisions to the sentences they seek to impose—determines whether the local justice system is fair and just. They also wield significant influence as policymakers and civic leaders, and can work with legislators, judges, public defenders, law enforcement, and other community stakeholders to advance justice through policy reforms.

Prosecutors can and should use this power to end the scourge of mass incarceration in America. Texas has one of the largest prison populations in the country. The state’s over-reliance on incarceration and harsh punishment is both costly and ineffective; it exacts enormous financial, emotional, and social costs on communities across the country while exacerbating recidivism and leading to more crime.

This questionnaire evaluates whether local prosecutors are committed to addressing the key drivers of mass incarceration. The questions fall broadly into six categories:

1. Policies Aimed at Reducing Mass Incarceration
2. Policies Aimed at Reducing Excessive Punishments
3. Policies that Aid Undocumented Communities
4. Policies that Promote Police Accountability
5. Policies that Promote Transparency and Accountability to the Community
6. Policies that Guard the Community Against Abuse of Power by Officials

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The Role of the Prosecutor
Do you believe that there is an over-reliance on incarceration in your county? What do you believe is the prosecutor's role, if any, in ending mass incarceration?

Yes. See answers in the section below.

Policies Aimed at Reducing Mass Incarceration

1. Limit the Use of Money Bail

Texas's continued use of unjust money bail policies contributes to the overall incarceration of poor people and disproportionately harms people of color by keeping them incarcerated simply because they cannot afford to pay bail.

What role, if any, do you think money bail should play in our justice system?

The continued use of unjust money bail policies contributes to the overall incarceration of poor people and people of color by keeping them incarcerated simply because they are too poor to pay bail.
I am opposed to money bail and support the use of personal recognizance bonds in most misdemeanor cases as detailed in the Harris County consent decree.

As Travis County Attorney I would implement the following changes to limit the use of money bail:

1. Adopt key elements of the Harris County consent decree, pertaining to O'Donnell v. Harris County, as a guideline so that most arrestees are released, but for those accused for serious crimes such as family violence or repeat and/or serious DWI. Currently, Travis County releases 71 percent of all arrestees on PR bonds. Adopting key elements of the Harris County Consent decree would drive that number to 85 percent, by some estimates.

2. I support 24 hour representation at magistration and I believe under Booth v. City of Galveston, such representation will soon be required. However, my office cannot fund this without the Commissioners court support. If arrestees were represented at magistration, their attorneys could argue in favor of more advantageous bond conditions.

3. In lieu of funding for 24 hour representation at magistration, I support an enhanced intake process whereby as County Attorney, I would reallocate current resources in my office so that sexperienced prosecutors would review misdemeanor charges and reject police charges before a file is opened if there is evidence of police bias, Brady or other evidentiary problems.

4. I support separating bond review from plea agreements. In my view, the system puts too much pressure on a detainee to accept a plea agreement just to get out of jail.

Harris County just entered into a misdemeanor cash bail settlement. Are the reforms in the settlement enough? Too much? Are there additional changes you would make to an internal office policy as the Travis County Attorney on bail?

I would adopt key elements of the Harris County consent decree, pertaining to O'Donnell v. Harris County, as a guideline so that most arrestees are released, but for those accused for serious crimes such as family violence or repeat and/or serious DWI. Currently, Travis County releases 71 percent of all arrestees on PR bonds. Adopting key elements of the Harris County Consent decree would drive that number to 85 percent, by some estimates.
What changes would you make to the current cite and release policy?

I support cite and release for many minor offenses such as shoplifting, graffiti, POM and criminal trespass. The Travis County attorney’s office is currently not prosecuting for POM.

In Austin, cite and release and pre-booking diversion are dependent upon cooperation between the police, the courts and the prosecutors. I would be willing to work to with these stakeholders to expand cite and release.

I have already spoken to Travis County Justice of the Peace Nick Chu about pre booking diversion which was being used for POM. Both he and I would like to expand it to other areas such as shoplifting, graffiti and criminal trespass.

Will you commit to not charging anyone who fails to appear on a cite and release with bail jumping or bond forfeiture?

- [ ] Yes
- [ ] No

Please provide any explanation you would like in the space below.

This is already the practice in Travis County for 71 percent of arrestees and I support using key elements of the Harris County consent decree as a guideline and that would bring the number up to 85 percent by some estimates.

Will you agree to waive discretionary fees for anyone who cannot pay for court fees, classes, or supervision fees imposed as a condition of their pretrial release? If no, why not?

- [ ] Yes
- [ ] No
Please provide any explanation you would like in the space below.

Yes, to the degree my office has control over those fees. Most fees are handled by pre-trial services and counseling and education and not the Travis County Attorney's Office.

I plan a review of all fees and costs associated with diversion programs and to the degree that I have control over those fees, inability to pay will not keep someone out of a program.

Will your office commit to taking a default position of release on a personal recognizance bond, with the least restrictive conditions (if any), unless there is a substantial risk to the community or high likelihood of flight, for all charges in which statutorily permitted to do so?

- Yes
- No

Please provide any explanation you would like in the space below.

See answers above

Under what circumstances would you believe a person poses a substantial risk to the community?

See answers above

Will you adopt an office policy not to ask someone to plead guilty so they can get out of jail, but simply to consent to a PR bond instead?

- Yes
- No
2. Keep People Out of Jail for Misdemeanor Drug-Related Offenses

Years of experience with ineffective drug laws and the latest medical research on addiction suggest that treating drug use as a public health issue, as opposed to a criminal justice issue, is a more effective and humane approach to reducing harm.

Will you support diversion programs for misdemeanor drug offenses?
- Yes
- No

Please provide any explanation you would like in the space below.

Any misdemeanor drug offense is low level. I believe that addiction is an illness rather than a crime. I am open to diversion for any misdemeanor drug offense.

3. Adopt Policies to Avoid the Criminalization of Poverty

Local criminal justice systems disproportionately harm people living in poverty. Whether through the imposition of fines and fees as a condition to resolving cases, or through laws that effectively criminalize homelessness, local actors have imposed a poverty penalty on many within the community.

Will you refuse to permit a person's financial resources to play a role in their eligibility for bail, a plea agreement, the appropriate sentence, or entrance to a diversionary program?
- Yes
- No
Yes. In fact, I plan a review of all fees and costs associated with diversion programs and to the degree that I have control over those fees, inability to pay will not keep someone out of a program.

Will you adopt fee waiver programs for those diversionary programs that currently require fees?

☐ Yes  
☐ No

Please provide any explanation you would like in the space below.

Yes, to the degree my office has control over those fees. Most fees are handled by pre-trial services and counseling and education and not the Travis County Attorney’s Office.

Will you oppose incarceration based upon the failure to pay fines or fees?

☐ Yes  
☐ No

Please provide any explanation you would like in the space below.
Will you establish a strong presumption against prosecuting criminal trespass and other conduct that is a byproduct of homelessness or poverty?

- [ ] Yes
- [ ] No

Please provide any explanation you would like in the space below.

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**Policies Aimed at Reducing Excessive Punishments**

1. **Treat Kids Like Kids**

Recognizing that children's brains continue developing until around age 25 and that research supports their enhanced capacity for rehabilitation, children should not be prosecuted in adult court and they should not be given punishments that preclude the opportunity for redemption.

Will you establish a strong presumption against prosecuting school suspension or expulsion cases where there is no use or threat of force resulting in physical harm?

- [ ] Yes
- [ ] No

Please provide any explanation you would like in the space below.

The Travis County Attorney's Office does not have control over this area.
3. Promote Proportionate Sentencing and Pathways to Second Chances

People are more than their worst acts, and even people who commit even serious offenses often change profoundly over time. To recognize the worth and potential for growth in all people, it is important for local prosecutors to provide individualized consideration to the character and background of each person and to the circumstances surrounding the commission of the offense.

Will you pledge to establish an office policy against increasing or threatening to increase the number or severity of charges in order to secure more favorable plea dispositions or waivers of rights?

- Yes
- No
People are more than their worst acts, and even people who commit the most serious offenses often change their lives profoundly over time. To recognize the worth and potential for growth in all people, it is important for locally elected prosecutors to provide individualized consideration to the character and background of each person and to the circumstances surrounding the commission of the offense. It also is critical for elected prosecutors to promote opportunities for release, through parole or clemency, and to help remove barriers to reentering society for those who are released from incarceration.

Will you require that the chief assistant prosecutor approve all jail sentences sought?

- Yes
- No

Please provide any explanation you would like in the space below.

As a misdemeanor prosecution office we handle too many cases for the chief assistant prosecutor to review all of them. However the court chiefs will review all jail sentences.

Will you pledge to adopt an evidence-based probation policy, that includes limiting term limits of supervision, and agreeing not to ask for jail when there is a technical violation of probation?

- Yes
- No

Please provide any explanation you would like in the space below.
Texas is home to a large and diverse immigrant population. In the last year, undocumented communities have come under increasing attack because of increasingly vicious federal immigration laws. These policies not only allow for deportation because of minor allegations like possession of drugs, but they also make communities less safe, as undocumented victims fear going to court or speaking to law enforcement.

Will you implement an office-wide policy requiring prosecutors to consider immigration consequences in charging, plea, and sentencing decisions?

- Yes
- No

Please provide any explanation you would like in the space below.

Within the bounds of State and Federal law, I will always look for ways to decrease the impact of misdemeanors on immigrants.

Will you support suits against SB4? If no, why not?

- Yes
- No

Please provide any explanation you would like in the space below.

I helped sue our Republican Governor and won a temporary injunction against SB4, a measure that would have banned "sanctuary cities".
Will you decline to require a guilty plea or any other admission of guilt before admission to a diversion program?

- Yes
- No

Please provide any explanation you would like in the space below.

Declining to prosecute certain classes of cases is different than diversion and does not require time or acceptance into a program. Which, if any, of these charges will you decline to prosecute: marijuana, criminal trespass, theft of necessities, drug possession, criminal mischief, graffiti? Please explain any exceptions to declination you would have.

My office will decline to prosecute marijuana. Regarding other classes of cases most of the time we will not be prosecuting these but I will need to review them on a case by case basis.

Will you implement an office-wide policy that Padilla Writs should be agreed to unless there is affirmative evidence that the attorney gave correct and complete immigration advice to the person?

- Yes
- No

Please provide any explanation you would like in the space below.

My office will support a standing order by the courts that Padilla Writs should be agreed to.
Policies that Promote Police Accountability

Although charged with serving and protecting, police officers are too often the perpetrators of violence against our communities. Enhancing transparency and accountability is crucial to promoting trust between the community and law enforcement. In the wake of the flood of police misconduct, especially violence against people of color and children, the district attorney must be committed to rigorously and independently investigating and prosecuting police misconduct.

When legally able to do so, will you release any dash-camera, body-camera, or other audio or video footage related to police-involved misconduct within 24 hours of any charging decision?

- Yes
- No

Please provide any explanation you would like in the space below.

Yes, when such is available and I am legally able to do so.

Will you decline to use testimony from officers known to have committed misconduct in the past, including, but not limited to, perjury, making false allegations, withholding exculpatory evidence from the defense and making statements evidencing racial bias?

- Yes
- No

Please provide any explanation you would like in the space below.

Yes. I take Brady requirements very seriously.
Will you maintain a list of police officers who are known to have committed misconduct in the past including, but not limited to, perjury, making false allegations, withholding exculpatory evidence from the defense and making statements evidencing racial bias?

- Yes, and I will make that list available to the public
- Yes, but I will not make that list publicly available
- No

Please provide any explanation you would like in the space below.

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Policies that Promote Transparency and Accountability to the Community

Enhancing transparency and accountability within the district attorney's office is critical to ending the win-at-any-cost pursuit of high conviction rates that is failing our communities. Our elected prosecutors must build a culture focused on seeking justice for victims and ensuring that justice is equal. This requires openness to community scrutiny and feedback, paying close attention to racial disparities, and prioritizing the needs of victims and their families.

In order to measure the effectiveness of policies and reforms, will you maintain and publish regular statistics about prosecutions, including the number of cases filed each month, disposition statistics, pretrial incarceration rates and length of stay by offense category, average bond for each class of offense, and caseloads of prosecutors?

- Yes
- No
Yes, I plan to retain a data expert to track this information and make it available to the public.

Will you include racial information at all steps, committing to publicly report any significant racial disparities at any stage of the process?

- Yes
- No

Please provide any explanation you would like in the space below.

Will you build a staff that reflects the diversity of the community the office serves?

- Yes
- No

Please provide any explanation you would like in the space below.
Will you commit to regular communication with community members and organizations, including regularly scheduled open sessions and regular meetings with civilian oversight boards to listen to and then address concerns over police-community relationships and allegations of police brutality?

- [ ] Yes
- [ ] No

Please provide any explanation you would like in the space below.

Will you prioritize the needs of the victims of violence by expanding support of victim/witness service programs and improving communication with victims and family members?

- [ ] Yes
- [ ] No

Please provide any explanation you would like in the space below.

Yes. My plan is to review all intake forms to ensure that victims of domestic violence are not re-telling traumatic events unnecessarily. I support hiring additional victim witness counselors. I support ending the backlog in the family violence court by moving some of those cases to another court with specialized training and specialized prosecutors.

Policies that Guard the Community Against Abuse of Power by Officials

Fraud and public corruption undermines public trust in government. There are also inevitable mistakes that have life-altering impacts. It is crucial that elected prosecutors serve as one of the first lines of defense to protect the less powerful in our society from exploitation, especially when it comes to abuse of power by those in government who are supposed to act in the public interest.
Will you end the process of abusive civil asset forfeiture wherein the county seizes cash or possessions before there has been conviction or in instances where there is not even proof of criminal activity?

- Yes
- No

Please provide any explanation you would like in the space below.

Will you commit to use asset forfeiture in criminal cases only after obtaining a conviction, and ensure members of the community have a meaningful opportunity to contest seizure when it happens?

- Yes
- No

Please provide any explanation you would like in the space below.

Will you support statewide legislation to end the use of civil asset forfeiture?

- Yes
- No

Please provide any explanation you would like in the space below.
Will you create mechanisms for a second look at charging decisions, plea bargains and convictions, because mistakes are inevitable and the consequences life-altering?

- Yes
- No

Please provide any explanation you would like in the space below.

Will you create a conviction review unit, complete with an independent panel to review the unit’s findings? Will you operate that unit transparently and publish regular data summarizing the unit's findings?

- Yes
- No

Please provide any explanation you would like in the space below.

I will provide a process for those who feel they have been unfairly treated in the misdemeanor system to file a complaint with an integrity unit for investigation. This information will be available to the public to the degree such is allowed by law.

Please provide any additional information that you would like to share.