



ACLU of Texas District Attorney Candidate Questionnaire

Congratulations on your candidacy for Harris County District Attorney!

All candidates for Harris County District Attorney have received a request to complete this questionnaire created by the ACLU of Texas.

Please help educate voters about your position on the issues by responding to this questionnaire by Friday, January 3, 2020.

By submitting this questionnaire, you give permission for your responses to be made available to the public.

Answers to these questions may be published online and distributed to voters. The questionnaire consists of 38 Yes or No questions, each with an opportunity to provide a comment or explanation.

Where neither “Yes” nor “No” is selected, the response will be recorded as “Did Not Respond”.

All respondents will receive a copy of their submitted responses and have an opportunity to correct any mistakes or errors.

We also want to remind candidates about our Harris County District Attorney Candidate Forum, scheduled for Thursday, January 30th at 6:30pm held at Interfaith Ministries. We will provide additional forum details in the first week of January.

Please direct any questions to Brad Pritchett at BPritchett@aclutx.org or call 346-299-6810.

Respectfully,

ACLU of Texas Campaign Team

For nearly 80 years, the American Civil Liberties Union of Texas has worked in the courts, the Legislature, and through public education to protect individuals’ civil rights and liberties. As part of our organization’s nationwide effort to fight racism within the criminal legal system and cut the nation’s prison population in half, the ACLU of Texas has launched a public education campaign in Harris County. The ACLU will not endorse or oppose specific candidates for elected office. Our goals are to ensure that voters are educated about the potential consequences of an election, to educate voters, including our members in Harris County and those directly impacted by incarceration, about the role district attorneys play in mass incarceration. Through this campaign, the ACLU of Texas is working to hold candidates accountable to their communities’ fundamental need for justice, safety and respect.



Candidate Information

Contact Information *(For survey administrator use only)*

- a. Candidate Name: Kim Ogg
- b. County : Harris
- c. Contact Person : Anna Carpenter, Campaign Manager
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- e. Contact Phone Number : 936-827-3872

About the Campaign *(For Public Use: to be posted online along with survey responses)*

- a. Campaign website : <https://www.kim-ogg.com/>
- b. Campaign email address : info@kim-ogg.com
- c. Campaign phone number: 832-466-1946

End Mass Incarceration

In Texas, more than 233,000 people sleep behind bars in state and local facilities. Texas locks up more people in absolute numbers than any other state. Since the 1980s, the state's prison population grew by 500% and correctional costs more than tripled. Our prisons and jails have become costly and outdated behemoths that cause more problems than they solve. Mass incarceration has deepened racial injustice, shattered neighborhoods, and separated families, all without evidence that it has improved public safety.

1. Will you commit to reducing the number of people [Harris/ Harris] County sends to state jail or prison by 20% by the end of your upcoming four-year term, and put forward a written platform detailing how you plan to accomplish that goal within your first 100 days in office?

Yes No

Explanation (500 words): My Administration's policies and programs have already resulted in a decrease of more than 20% in individuals sentenced to state jails and TDCJ since 2015. To maintain and improve the results of the past three years, my Administration will continue to work with 87+ law enforcement agencies and court and community resource providers to divert non-violent mentally ill and drug addicted offenders to treatment instead of incarceration.



Texas

Fight Racism in the Criminal Legal System

Many aspects of our criminal legal system were designed during the Jim Crow-era to protect white supremacy. That legacy drives vast racial injustices. One out of every three Black boys are incarcerated in their lifetime, as is one in every six Latino boys — compared with one of every 17 white boys. In Texas, Black People make up 33 percent of the prison population, but only 13 percent of the state population.

- 2. Will you make it part of your Office’s mission to reduce racial disparities that arise from police practices, work with police and other agencies to meaningfully compare and address racial disparity at different points in the system, and if you meet resistance, propel changes by declining to proceed with cases that are clouded by a pattern of racist conduct?

Yes No

Explanation (optional):

Since taking office, my Administration has worked with TSU, UHD, and several committees within Harris County Government to share data used to identify racial disparity in the justice system.

In my official capacity, I addressed racial disparity in both misdemeanor and felony drug possession cases significantly by implementing policies, practices and programs that have reduced racial disparity in case filing, diversion opportunities, and sentencing options. The most significant areas of accomplishments are in the areas of marijuana and felony drug possession cases and through our Mental Health Diversion program, programs that have kept thousands of individuals from criminal convictions and criminal records altogether.

Major reforms such as drug and mental health diversion programs are best accomplished through working with all stakeholders; of course, in any case in which evidence emerged showing of a pattern of racist conduct by a witness, the prosecutor has a burden to disclose such evidence.

- 3. Will you track and regularly release race and gender data for actions including bail requests, charging decisions, plea bargains, sentencing recommendations, and parole board recommendations, and permit an outside source to review the data, evaluate disparities, and make recommendations to reduce them?

Yes No

Explanation (optional):

Since taking office, my Administration has worked with TSU, UHD, and several committees within Harris County Government to share data for a variety of research, policy and programming changes. Information which is confidential as a matter of law is not disclosed.



- 4. Will you commit to implementing policies and practices that combat bias in decision-making within your office, by regularly bringing in experts to train staff and prosecutors on implicit and explicit bias, by prioritizing inclusive hiring and promotion, and by ensuring the office is racially and ethnically diverse?

Yes No

Explanation (optional):

Since taking office in 2017, I have diversified leadership and made hiring equality a priority in human resources. We have increased African American hiring among attorneys by 91% and Latino attorneys by 125% since 2015. This has been accomplished through intentional policies and practices emphasizing the importance of other perspectives. Unlike any other Administration in the history of the District Attorney’s Office, we recruit from a variety of law schools around the nation and from all three law schools here in Houston.

As an employer of more than 800 Harris County employees, my Administration began offering bilingual pay in early 2018 and did so despite no budget increase to accommodate the policy change. We now have approximately 125 participants.

The Harris County District Attorney’s Office Human Resources Bureau, under the direction of Yvonne Taylor and Chief of Staff, Vivian King, regularly train our employees on implicit and explicit bias.

End the War on Drugs

Keep People Out of Jail and Prison for Drug-Related Offenses

Incarcerating people for problematic drug use is a waste of money and time that often victimizes and destabilizes an already vulnerable population – disproportionately people of color and poor people -- who are then released to the streets with no rehabilitative support, leading to more crime and overdose deaths. Treating drug use as a public health issue is a more effective approach to reducing harm and promoting stability and safety.

- 5. Will you issue public statements in support of statewide legislation that makes possession of a gram or less of controlled substance a Class A misdemeanor rather than a felony?

Yes No

Explanation (optional):



Texas

I believe that Possession of a Controlled Substance of a gram or less should **not be a felony** crime. I have testified before numerous Texas legislative committees over the past several decades about reduction of classification and penalties for drug crimes, as well as in favor of alternative sentencing for drug crimes. I have given interviews with media on the same topic and specifically denounced the “drug war” as a failure.

6. Will you decline to prosecute all cases involving only possession of a gram or less of a controlled substance unless there is evidence that the accused person poses a danger of serious physical harm to another member of the community?

Yes No

Explanation (optional):

No. I will continue to accept criminal drug possession charges where probable cause exists because as the top law enforcement official in Harris County, I am sworn to uphold the laws of Texas and the United States.

I will also continue to divert as many offenders as possible into treatment programs, whether voluntary or court supervised.

I will also support legislative change to Texas drug laws.

7. Will you either offer diversion or decline to prosecute all cases involving only possession of less than four grams of a controlled substance unless the accused person poses a danger of serious physical harm to another member of the community?

Yes No

Explanation (optional):

Since taking office, my Administration have aggressively reformed the prior practices and policies of the DA’s Office which limited felony drug possession diversion to first offenders and often showed implicit bias.

Prosecutors have been permitted and encouraged to offer diversion to all drug possession offenders charged with 4 grams or less since July 2018 when I changed the HCDAO policy to allow same.

I also reformed the DA’s Office policies regarding acceptance of “trace” cases, also known as “residue cases” in July 2017.

8. Will you decline all charges against defendants accused of drug possession until a laboratory report is completed?



Texas

Yes No

Explanation (optional):

In all marijuana cases this is already true. Following the “hemp” law change, I was the leader among Texas prosecutors in forming a coalition to announce that Harris, Nueces, Fort Bend and Bexar County District Attorneys’ Offices would not pursue Possession of Marijuana post June 10, 2019 without a laboratory report. This was the most progressive position taken in the state among prosecutors and it took collaboration to obtain the agreement of other elected District Attorneys to join me in the policy change in order to give Texans a more consistent application of drug laws.

In regards to felony drug possession, I also reformed the Harris County District Attorney’s Office policy to forbid pleas of guilt or entry into a diversion program without a laboratory test to confirm the evidence as actual illegal drugs.

Stop Wasting Time and Money on Marijuana Offenses

The aggressive enforcement of marijuana possession laws needlessly ensnares thousands of people, disproportionately people of color, into the criminal justice system and wastes millions of taxpayers’ dollars. What’s more, it is carried out with staggering racial bias.

9. Will you issue public statements in support of statewide legislation aimed at decriminalizing marijuana?

Yes No

Explanation (optional):

I have the most progressive marijuana possession policies and practices of any District Attorney in Texas and routinely make public statements in support of decriminalization of marijuana. Most Houstonians believe that due to my policies here in Harris County that marijuana has been “de facto” decriminalized here, when in fact only the Legislature has the power to do so.

10. Will you either dismiss or decline to prosecute all misdemeanor possession of marijuana cases, without conditioning declination or, unless there is evidence that the accused person poses a danger of serious physical harm to another member of the community?

Yes No

Explanation (optional):

The Harris County District Attorney’s Office Misdemeanor Marijuana Diversion program has kept tens of thousands of individuals out of jail and without a criminal record, despite being caught by police in possession of less than 4 oz. marijuana REGARDLESS OF PRIOR CRIMINAL HISTORY. By allowing everyone into this diversion program, racial



Texas

disparity in the enforcement of misdemeanor marijuana laws has been eliminated in Harris County. In states where possession of marijuana remains a jailable offense, it is the most successful program in the United States.

If a person poses a danger of serious physical harm to another member of the community, it is likely that it is another criminal offense.

Principle 1: End Wealth-Based Disparities

End Money Bail and Support Pretrial Fairness

Texas’ continued use of unjust money bail policies contributes to mass incarceration and unfairly punishes people who don’t have money by keeping them incarcerated simply because they cannot afford to pay bail. Wealth-based detention denies most people a fair chance at justice, disproportionately affecting Black people and other people of color. Moreover, secured money bail is no more effective than non-secured money bail.

11. Will you issue public statements in support of statewide legislation and local ordinances aimed at eliminating money bail?

Yes No

Explanation (optional):

I filed an Amicus brief in support of eliminating money bail for non-violent misdemeanor offenders who did not pose a public safety threat in O’Donnell v. Harris County, the federal misdemeanor bail lawsuit.

12. Will you issue public statements in support of statewide legislation and local efforts to provide defendants counsel at magistration?

Yes No

Explanation (optional):

I testified before the Harris County Commissioner’s Court and other governmental bodies, as well as given statements to the press, that bail hearings are a “critical” stage in criminal litigation and that the accused should be represented by counsel. Additionally, I testified that the Public Defender should receive additional staffing to insure this.

13. Will you recommend release on personal recognizance bond for all defendants unless your office makes an individualized determination of safety and flight risk?



Texas

Yes No

Explanation (optional):

Every single defendant and every single case must be individually assessed to ascertain the risk level they pose to the community, along with the likelihood of their return to court if given bail. The prosecutor then makes a recommendation to the magistrate and/or judge about the State’s request for bail, but bail--the amount and type of bail-- is solely a judicial determination.

14. Will you only recommend secured bond as a condition of pretrial release in cases where there has first been an individualized ability to pay determination, the amount requested is based on what a person can presently afford, and there has been a determination that no non-monetary conditions can ensure appearance at court and public safety?

Yes No

Explanation (optional):

The question can’t be answered as written because the judicial determination regarding safety necessarily comes only after prosecutors make their recommendations by presenting facts and evidence to the court. It is the prosecutor’s job to present all evidence at hand that would give the court the information necessary to determine whether, non-monetary conditions can/will ensure appearance at court and public safety.

Make Diversion Routine and Accessible to All

Well-designed diversion programs can safely divert people from jail or prison, or from the justice system entirely, can reduce recidivism, conserve resources, and diminish the collateral harms of criminal prosecution.

15. Whenever possible, will you ensure people are not excluded from diversion programs because of their criminal history, mental illness, or drug use?

Yes No

Explanation (optional): _____

16. Will you avoid, whenever possible, imposing costs of diversionary program participation on individuals and basing costs, if necessary, on a “sliding scale” fee structure that considers an individual’s ability to pay?

Yes No

Explanation (optional):



Texas

The many diversion programs now offered by the District Attorney’s Office, including Marijuana Diversion, all allow for participation by the indigent, when they do not have sufficient income to pay.

17. Will you allow defendants to participate in diversion programs without an admission of guilt, if the admission isn’t needed to promote the goals of the program?

Yes No

Explanation (optional):

My Administration amended the HCDAO Pretrial Intervention agreement contracts in 2019 to specifically eliminate the admission of guilt requirement. This change impacts our PTI program offerings, which divert the largest numbers of offenders out of the justice system without a conviction or criminal history.

Our policy was directed specifically at reducing negative prospective collateral consequences.

Avoid Criminalization of Poverty & End Debtor’s Prison

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 people within our communities.

18. Will you make pretrial release, plea agreements, diversionary programs, and other favorable sentencing programs available to all defendants, regardless of ability to pay?

Yes No

Explanation (optional):

Anyone in the criminal justice system who is indigent must be afforded equal opportunity for diversion or any other type of alternative sentencing program. All the Harris County District Attorney’s Office prosecutors adhere to this constitutional requirement.

19. Will you oppose incarceration based upon the failure to pay fines, fees, court costs, failed to complete classes or restitution unless there is uncontroverted proof the individual is able but willfully refusing to pay?

Yes No

Explanation (optional):

It is the accused’s right to present evidence of indigency and inability to pay and it is the exclusive authority of judges to make such findings.



Principle 2: Fair Sentencing, Charging, and Plea Bargaining Practices

Treat Kids Like Kids

Long-term outcomes for teenagers, young adults, families and communities are better when youth have as little contact with the criminal justice system as possible, or when their cases remain in juvenile court. Putting youth in adult prisons leads to more crime, higher prison costs, and increased violence. Moreover, the adolescent brain differs from the adult brain in ways that increase the likelihood of risky and reckless behavior.

20. Will you decline to prosecute children for typical adolescent behavior such as fist fights, smoking marijuana, disorderly conduct, or other infractions at school that do not result in serious physical harm?

Yes No

Explanation (optional):

My Administration already works with all Harris County school district superintendents and their policing agencies to handle most school-related legal infractions in an administrative manner, as opposed to filing criminal charges. We have significantly reduced the number and types of cases being filed against juvenile offenders by working with community-based organizations such as the Fifth Ward ReDevelopment Corp, and officers and school officials working in the LEAD program in one HISD Middle School.

21. Will you decline to seek certification as an adult for children under the age of 18?

Yes No

Explanation (optional): _____

22. Will you adopt an office-wide policy stating that your office will never seek the death sentence for any person under the age of 18?

Yes No

Explanation (optional):

This is already the law.

Do Not Seek the Death Penalty



Texas

In 2018, Texas executed more people than any other state. There is mounting evidence that the death penalty is fraught with error, provides no additional public safety benefit over other available sentences, and is routinely used against individuals with diminished capacity, including persons with intellectual disabilities and severe mental illness, youth, and those who have experienced extreme childhood trauma.

23. Will you commit to never seek the death penalty?

Yes No

Explanation (optional): _____

Under my administration capital punishment has been drastically reduced and the decision-making process has completely changed.

Fair Sentencing, Charging, and Plea Bargaining

Elected prosecutors have nearly unchecked authority to decide whether someone will be charged with a crime, which crimes to prosecute, and who gets a second chance through diversion or treatment programs. In the past forty years, elected prosecutors across the country have sought more severe sentences and punishments and fueled our country’s mass incarceration crisis.

24. Will you commit to decline prosecution of quality-of-life offenses, including criminal trespass, public urination, and driving without a license, which do not add to public safety but carry devastating consequences for poor defendants?

Yes No

Explanation (optional):

My Administration has crafted numerous diversion programs including the Misdemeanor Marijuana program and Mental Health Diversion program which have kept thousands of people out of jail for low level non-violent crimes such as Trespassing and Possession of Marijuana.

As the top law enforcement official in Harris County, however, I am bound to uphold the laws of Texas and the U.S.

25. Criminalizing consensual sex work makes sex workers vulnerable to violence and abuse by limiting their ability to seek help or protection. In particular, criminalization of consensual sex work leaves people who are excluded from traditional employment opportunities, including transgender people and other members of the LGBTQ+ community, vulnerable to harm. Will you decline to prosecute arrests stemming from consensual sex work?



Texas

Yes No

Explanation (optional):

Project 180 currently provides for sex workers to be diverted as well as jailed, depending on the individual circumstances of the case.

26. Locking people up for long periods of time does little to improve safety and may actually lead to more crime as people spend more time in prison. Further, studies have found that people almost always “age out” of crime. Will you direct your prosecutors to never seek more than 30 years in prison as a maximum penalty, except in unusual cases such as a mass murder?

Yes No

Explanation (optional):

Every single person accused, and every crime victim deserve individual consideration as to the most appropriate outcome of their perpetrator’s criminal case.

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27. Will you establish an office policy against increasing or threatening to increase the number or severity of charges, the severity of a sentence, or seeking or threatening to seek transfer of a case from juvenile to adult court in order to secure more favorable plea dispositions or waivers of rights?

Yes No

Explanation (optional):

Every case and every single person accused deserves individual consideration as to the most appropriate outcome of their criminal case. Facts in cases change at times when laboratory tests are returned, when science advances, and when witnesses change their story. Plea bargaining often involves consideration by a prosecutor of the facts as they exist at the time of the plea offer, just as it involves a defendant’s consideration about the risk of going to trial and the potential consequences.

28. Will you vehemently oppose any attempt to criminalize either a doctor performing or a patient seeking an abortion? Please select “Yes” or “No” and provide any explanation you would like.



Texas

Yes No

Explanation (optional): _____

Reduce Re-incarceration for Petty Probation Violations

Probation revocations are fueling mass incarceration in Texas. In part, this is because excessive community supervision increases the likelihood that people who are otherwise at low risk of being rearrested will end up incarcerated for petty technical violations, such as failing to pay fines or fees and other acts that do not threaten public safety. The majority of violations occur within the first year, suggesting that lengthy supervision serves little to no rehabilitative purpose.

29. Will you direct your prosecutors to generally not ask for jail, state jail, or prison time for technical violations of community supervision?

Yes No

Explanation (optional):

Every case and every single person accused deserves individual consideration as to the most appropriate outcome of their criminal case

30. To prevent re-incarceration on technical violations, will you direct your prosecutors to seek probation terms of one year or less for misdemeanors and the minimum required probation terms for felonies unless there is compelling reason for a longer term?

Yes No

Explanation (optional):

Every case and every single person accused deserves individual consideration as to the most appropriate outcome of their criminal case.

Protect Immigrant Communities

Criminal charges, convictions, and pretrial detention can trigger deportation proceedings for people who are not U.S. citizens. These threats, as well as the targeting of immigrant communities by extremist politicians, can discourage the reporting of crimes, making communities less safe. Moreover, the U.S. Supreme Court in *Padilla v. Kentucky* suggested that when prosecutors consider immigration consequences, more just outcomes can be obtained for all parties.

31. Will you train and direct prosecutors to consider the immigration consequences of a conviction during each stage of a case, and to choose immigration-safe dispositions when possible and appropriate?



Texas

Yes No

Explanation (optional): _____

32. Will you publicly oppose policies that use or divert local law enforcement resources for federal immigration enforcement?

Yes No

Explanation (optional): _____

33. To protect immigrant crime victims, will you pledge to adopt and promote a written U Visa policy in your office 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?

Yes No

Explanation (optional):

The District Attorney's Office does not and cannot make presumptions in favor or against any witness. We have revised our U Visa Policy to broaden our impact with human trafficking victims, domestic violence victims and even gang members to improve prosecution outcomes in serious cases.

34. Many noncitizens are not adequately advised by defense counsel of the immigration consequences of their guilty pleas and are subject to unanticipated mandatory deportation after completing their criminal sentences. Will you be willing to establish an office point person who reviews motions to vacate convictions and, when appropriate, agrees to stipulate to such motions? Will you identify a point person to ensure immigrant defendants are aware of the consequences of pleading guilty?

Yes No

Explanation (optional):

The District Attorney's Office Writs Division and Conviction Integrity Division both serve this function, although do not communicate with unrepresented defendants.

Transparency and Community Trust

35. Will you pledge to publish on the Office website all existing policies, protocols, and MOUs regarding prosecution guidelines, police-involved incidents, bail recommendations, fines and fees, diversion programs, plea bargains, civil asset forfeiture and determination of indigence?

Yes No

Explanation (optional):



Texas

The District Attorney’s Office already publishes our Office Manual and policies which are public record. However, we do not publish information about all police-involved incidents because that information is not public and may not be published.

- 36. Will you develop and implement a "Do Not Call" witness list for law enforcement officers in your jurisdiction? Will you require all prosecutors in the office to reject new cases and search warrant requests from police officers with histories of misconduct, dishonesty, racism, or bias?

Yes No

Explanation (optional):

Texas law does not disqualify anyone from testifying as a witness so long as they are mentally competent and understand the difference between right and wrong and therefore does not legally support a “No Call List.”

However, in order to meet the requirements of the Michael Morton Act, Brady v. Maryland and our ethical duties as attorneys, the Harris County District Attorney’s Office created and maintains a database of re-occurring governmental witnesses that includes police officers. This database contains impeachment information and disciplinary information obtained through agreement and subpoena by the DA’s Office with every law enforcement agency in Harris County. This is “in effect” a Brady list. Every witness in every case filed in Harris County is scanned through this database and all information disclosed to the Court when a witness is found to be listed in the database.

- 37. Will you commit to require an independent investigation when someone dies during an encounter with law enforcement or while in custody?

Yes No

Explanation (optional): _____

Every police officer involved shooting of a civilian is independently reviewed by the Harris County District Attorney’s Office Civil Rights Division and presented to randomly selected grand juries for a determination as to whether a crime was or was not committed by the police officer.

- 38. Consistent with the Michael Morton Act, will you implement an “open-file” discovery program and require that prosecutors turn over full discovery to the defense pre-indictment?

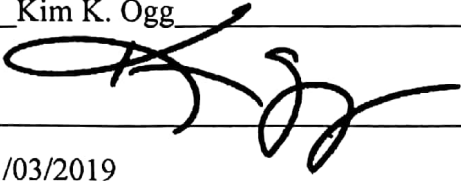
Yes No

Explanation (optional): _____

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Texas

Candidate Name: Kim K. Ogg

Candidate Signature: 

Date Submitted: 01/03/2019