5 Boro Defenders Queen DA Survey

Dear Candidate: 5 Boro Defenders is a group of New York City public defenders, civil rights attorneys and advocates organizing around the systemic injustices of the criminal legal system. While 5 Boro Defenders will not endorse any candidate in the upcoming race, we do plan to offer our expertise by releasing a report card, as 5 Boro Defenders did in the recent Manhattan and Brooklyn District Attorney races. We will be handing these voter guides out at community forums and distributing it through our partner organizations at https://www.queens4da.org. For reference, here is the 5 Boro Defender Voting Guide from the recent Brooklyn District Attorney race: https://tinyurl.com/5boroReportCard.

In reviewing your policy papers, websites, statements, and previous survey responses, we have been left with the following questions, and hope that you will complete the following survey to help us better understand your position on various issues facing the next District Attorney of Queens County. We hope to have all survey responses collected by **MARCH 1, 2019.**

Please feel free to reach out to us at 5BoroDefendersQueens@gmail.com with any questions.

1. Many candidates in this race have expressed that they will not prosecute for marijuana possession. However, many cases that begin with an "odor of marijuana" lead to additional charges. Practically speaking, police can cite an "odor of marijuana" to justify otherwise unlawful searches. (see: https://theappeal.org/i-arrested-a-man-on-marijuana-charges-then-he-took-his-own-life/#.XGG0ybkH71A.twitter) Given that context:
    a. How would you handle cases that begin with either an "odor of marijuana?" or an officer witnessing someone smoking marijuana?
    b. Specifically, how will you handle cases where a search based on marijuana reveals other contraband items such as weapons, forged credit cards, or other drugs?
    c. Will you push for the NYPD to stop engaging with citizens over marijuana alone?

We cannot let "odor of marijuana" become the new stop and frisk,"broken windows" or jumping the turnstile, whereby the claim of an "odor of marijuana" becomes the new vehicle for the police reaching into the lives of black and brown people to keep them monitored and criminalized. As one of the leading public officials forcing the City to acknowledge and change racist, pretextual over-policing policies, I won't let up as DA.

It will be office policy, reinforced by regular training, to interrogate common contrived catch-alls, be it the "odor of marijuana" claims used to justify otherwise unlawful stops and

searches, or resisting arrest and obstruction of governmental administration charges used to impose some notion of street justice on otherwise law-abiding residents. It is the DA's job to ensure that stops and searches underpinning a charge are lawful before commencing prosecution.

If we determine that a search was lawful and the police account is credible, e.g., that a police encounter began with an "odor of marijuana" where marijuana use when combined with some other act is unlawful (such as while when operating a motor vehicle), then a prosecution can proceed concerning any contraband properly discovered in the course of the search.

2. Queens County is unique New York City because it encompasses both LaGuardia and JFK airports. Regularly flyers are arrested with firearms at the airport that they legally may carry in their flight's place of origin, but do not have a permit to carry in New York State. Often these weapons are found when the passenger declares them at TSA or check-in during a flight transfer, or upon leaving New York City to return home. How would you handle these cases? Would you treat them the same or differently as someone who is found in possession of a firearm elsewhere in Queens?

New York's strict gun possession laws require careful application to each person's individual circumstances, including whether a traveller from another jurisdiction unwittingly violates the law merely by transferring from one flight to another at either JFK or LaGuardia airport. Someone who comes to New York with a firearm, spends time here, and then is caught during check-in on the flight home is more culpable; gun owners have an obligation to ensure that they are permitted to carry their gun in any jurisdiction travel to. As for someone who is found in possession of a firearm elsewhere in Queens, each person's culpability has to be evaluated on their individual circumstances.

3. One matter that comes before Queens Criminal Court is that of extraditions, where a person is arrested in Queens (often when coming through the airport) on a warrant from another state. Often these are arrest warrants where the person does not even know they are wanted. State law allows a person to be remanded to await the other jurisdiction arriving to take them into custody after the receipt of a Governor's Warrant (or a waiver by the defendant of such warrant). CPL 570 also allows for a person to be released to attend to the matter in the other jurisdiction themselves, or to have bail set. Currently, almost all defendants are remanded to wait for the other jurisdiction to arrive in Queens to transport them- this can take anywhere from a few days to a month or more. What would be your position on asking for bail, remand, or release in these cases? What factors would you consider in that decision?

If the out-of-state warrant is for an alleged serious offense, the person should be remanded only long enough to give the home state authorities the opportunity to come to New York and take the individual into custody. The duration should be strictly limited and not last for weeks or months. For other alleged minor offenses, the person will be released on their own recognizance or supervised release until a scheduled surrender date for the home state authorities to take the defendant into custody.

4. CPL 170.55 sets the length of an Adjournment in Contemplation of Dismissal (ACD) at 6 months (1 year for a family offense), unless a shorter time is negotiated with the District Attorney. CPL 170.56, which governs marijuana ACDs, gives a judge discretion to early seal an ACD (with the default as 1 year). An ACD, which is technically an open case, can cause issues at work or with immigration. Would you allow and advocate for short-sealing of ACDs? In what circumstances?

My goal is to limit a person's supervision under the criminal justice system to the greatest extent possible. We will approve shortened ACD times whenever possible, including when a person's education, employment, immigration, or financial circumstances warrant. (Also, we're not prosecuting low-level marijuana cases at all.)

5. Frequently defendants arrive in Criminal Court with warrants from a summons. An open summons warrant can prevent a person from getting a job, receiving a Desk Appearance Ticket or Summons on a new contact with police, and affect immigration status, as well as cause a person to be brought to court or arraignments by NYPD. In 2017, it was estimated there were 1.7 million open summonses in New York City.
    a. Would you commit to dismissing open summonses warrants without appearance necessary (such as was done for some summonses in 2017: https://nypost.com/2017/08/09/new-york-vacates-hundreds-of-thousands-of-summonses/)? For what category of charges, or with what conditions?
    b. Would you commit to dismissing summons for those who appear in court, rather than offering an ACD or fine? For what charges? (Frequent summons charges include being in parks after dark, littering, marijuana, failure to pay the subway fare, drinking in public, public urination)?

I was very involved in pushing the DAs to vacate open warrants, following our successful effort to effectively decriminalize of a variety of "broken windows" offenses (many you list above) resulting in a 90% reduction in criminal court summons. Originally, the Queens DA didn't want to vacate any warrants, and refused to sponsor a community-based warrant forgiveness program. Then the DA wanted to forgive only warrants older than twenty years. Eventually, the Queens DA relented and joined Manhattan, Brooklyn, and the Bronx.

We will dismiss open warrants arising from a failure to answer a criminal court summonses after 5 years.

For those who do appear, we will dismiss outright criminal summonses for offenses covered in the Criminal Justice Reform Act of 2016, except in extraordinary circumstances, where there is a civil analogue that could be charged instead, including littering, being in a park after dark, and public urination. I was a prime sponsor of the CJRA in the City Council and I fundamentally disagree with the exceptions the NYPD has created that lead to harsher penalties for those with prior criminal justice involvement.

6. Currently, it is common for Assistant District Attorneys in Queens to indicate to defense counsel that they are "unable" to outright dismiss cases at arraignments (or later) where evidence has been presented that there has been no crime, or of mitigating circumstances. Instead, they offer an ACD. What would your policy be regarding allowing ADAs to dismiss cases?

Prosecutors will be required by our strict ethical code to dismiss cases outright that lack a factual or legal basis for prosecution, or where mitigating circumstances suggest that prosecution is unwarranted. We have to break the culture in the Queens DA's office that defines success as obtaining the greatest number of guilty pleas or imposing the harshest sanctions on people. It is a product of a worldview that holds that every person arrested by the police must be guilty of something.

7. Would you prosecute the charge of Welfare Fraud? If so, will you prosecute cases where the agency/law enforcement has been aware of or should have been aware of, the alleged fraud, but allowed it to continue until the amounts involve support a felony charge as felonies, misdemeanors, etc? What offers would you make on cases involving welfare fraud, including when a defendant is unable to repay the full amount?

We won't prosecute small scale welfare fraud, including some felony level offenses, born of economic desperation, i.e., Penal Law § 158.05 (Welfare fraud in the fifth degree), Penal Law § 158.10 (Welfare fraud in the fourth degree, between $1K and $3K), and Penal Law § 158.15 (Welfare fraud in the third degree, between $3K and $50K), leaving the handling of such instances to the social welfare agencies responsible for administering those programs.

8. Many programs that are currently offered as a condition of sentences or pleas (including Attitudes in Dynamic Driving, the Victim Impact Panel, Anger Management, Drug Treatment, Mental Health Treatment, electronic monitoring devices such as the Right

Bac or SCRAM, Ignition Interlock Devices), have fees for attendance or usage. These fees may be hundreds or thousands of dollars, depending on the program or device, and failure to pay for a device or program in full can lead to a violation of a conditional discharge or plea agreement and jail time. How, if at all, would you address the issue of fees and payment for defendants that demonstrate financial hardship or indigence? Will you ensure that all defendants, regardless of poverty, have access to programs?

My committee held a hearing on fees, surcharges, etc., and their negative impact on the poor and the administration of justice (see e.g. Lancman Leads Hearing to Examine Cost of Justice in Criminal Cases, and New York City Council Committee on the Justice System hearing: "The Cost of Justice".) We will ensure that all defendants, regardless of poverty, have access to programs and no defendant is ever subject to a harsher penalty because of an inability to afford an alternative.

9. Convictions for any charge, including violations, include court fees (surcharge, crime victim assistance fee, DNA fee, Vehicle and Traffic Law Fees). These fees are imposed regardless of income, and regardless of whether DNA is taken or there is a "victim" in the case. Fees can total between $88-350 depending on the conviction or plea. (See https://finesandfeesjusticecenter.org/articles/new-york-should-re-examine-mandatory-court-fees-imposed-on-individuals-convicted-of-criminal-offenses-and-violations/) What is your position on court fees and surcharges? Would you advocate for their elimination or other changes?

See answer 8, above. I would also advocate for changes to the mandatory surcharges and fees imposed by the Court to reflect the reality of a defendant's financial circumstances. Public defenders should be able to move for Court surcharges to be completely or partially waived for indigent clients.

10. There is currently a community service program operated through the Queens District Attorney's office. This program has specific partners with which it works, specific time requirements (for instance, service must be during 9-5, with weekend service needing to be authorized by a judge), operates in English, and other limitations. Would you consent to allowing defendants to arrange their own community service at organizations? On felony pleas, misdemeanor pleas, or both? With what limitations or conditions?

Community service must be meaningful, relevant, and accessible to all. No community service requirement should put a person's employment at risk because it only operates during traditional work hours. We will work with community organizations throughout the borough to craft appropriate community service programs, preferably with a restorative justice perspective.

11. You have indicated your support for bail reform. Please describe what your position would be, in as much detail as possible, for the following categories of offenses. (ie, would not ask for cash bail, would ask for cash bail in certain circumstances, etc).
    a. Non-violent misdemeanors
    b. "Violent" misdemeanors (including Assault, Menacing, etc.)
    c. Non-violent felonies
    d. Violent felonies
    e. Preferred alternatives to cash bail if true flight risk
    f. Would you request or support changes in bail conditions if it becomes apparent a defendant cannot pay the bail set?

Our default position will be that every defendant, regardless of charge level, should be released on his/her own recognizance, subject to (a) the particular limitations on release on one's own recognizance for defendants charged with an "A" felony (Criminal Procedure Law § 530.20(2)(a)), and (b) defendants who we independently assess present a substantial flight risk using the criteria prescribed in Criminal Procedure Law § 510.30.

For those defendants where release on consent is not appropriate, we will not ask for cash bail or insurance company bond -- ever. Rather, we will ask for either an unsecured, partially secured, or secured appearance or surety bond that we verify the defendant can afford; supervised release; or, in rare and extreme circumstances, remand.

12. Many jurisdictions have moved towards using electronic monitoring devices in lieu of, or in addition to, cash bail. What is your position on this? In what cases, if any, would you advocate for such a system? For reference, please see: https://www.pewtrusts.org/en/research-and-analysis/issue-briefs/2016/09/use-of-electronic-offender-tracking-devices-expands-sharply , https://www.themarshallproject.org/records/2280-electronic-monitoring, https://www.wired.com/story/opinion-ankle-monitors-are-another-kind-of-jail.

We need to limit the criminal justice system's presence in people's lives. I wouldn't preclude the use of electronic monitoring devices in extreme circumstances, but the results of the current supervised release programs are quite successful without them and I'm strongly disinclined to add them to our toolbox. Electronic monitoring is often prohibitively expensive for the average Queens citizen. Creating two systems of release would be unfair to those who cannot afford it.

13. Queens currently has a number of court parts devoted to treatment of specific categories of defendants at both the Criminal Court and Supreme Court levels, including mental

health court, drug treatment court, veterans court, and human trafficking court. The criminal procedure law also allows for diversion of certain felonies. Currently, some categories of charge, such as domestic violence or any charge involving sexual touching or action, are prohibited by the District Attorney and Court policy from being sent to these parts, even if a defendant would be otherwise eligible. In some cases, a previous conviction for one of these charges makes a defendant ineligible for treatment court part (even if the current case is not the same category of charge) or previous participation in a treatment court part may prevent treatment from being reoffered. What would be your policy on eligibility of defendants and cases for these parts? How, if at all, do you plan to utilize these court parts or make recommendations for cases to be sent to them?

No one will be per se ineligible for participation in a treatment court. The idea that an ancient conviction for a violent felony offense would be automatically disqualifying to a treatment or problem-solving court defeats the very purpose of such courts. We've held many hearings on various treatment courts, have funded services in the Veterans Courts and the Human Trafficking Intervention Courts, and believe strongly in decriminalizing addiction and mental illness.

14. Will you charge crimes committed at schools, by students? For instance, fights between students, drug possession at school, disorderly conduct, etc? In what circumstances or on what charges will you dismiss these cases without prosecution? What, if any, specific charges would you decline to prosecute if committed by students at school? What, if any, diversion programs would you offer or require for such cases?

Scuffles, minor property damage and other offenses involving young people at schools only reinforce the school-to-prison pipeline, and are better handled within the school setting. As discussed in question 15 below, under our office's Raise the Age policy, virtually all genuinely serious offenses committed by students that we would otherwise prosecute would be transferred to Family Court.

15. New York's Raise the Age Law provides for removal to Family Court cases where a defendant is charged with a felony while 16 (include 17 year olds as of Fall 2019), and in some cases for Juvenile Offenders, where a defendant under the age of 16 has been charged in Supreme Court. What would be your policy on consenting to removal to Family Court? In what circumstances would you refuse to consent to removal? Would you advocate for changes to the law to allow other categories of cases to be removed or to originate in Family Court(for instance, cases for defendants up to 18 or another age, misdemeanors, VTL cases)? What, if any, charges would you refuse to prosecute for defendants under the age of 18?

Under Raise the Age, all cases other than non-drug Class A felonies and Vehicle and Traffic Law cases may be transferred to Family Court with the parties' consent. While the mechanism for transfer varies slightly based on whether the charge is non-violent, less serious, or more serious violent felony, our office's policy would be to consent to transfer virtually every case legally allowed. That is what it really means to raise the age of criminal responsibility.

16. In many cases, full orders of protection are issued at arraignments for witnesses, including complaining witnesses who may be family of the defendant. Orders of protection can prevent a person from working, seeing their children, or returning home. Would you agree to get written confirmation from witnesses that they desire a full order of protection before asking for one, or to agree to reduce an order to a limited order of protection/no order of protection if you do not receive such confirmation by the first court date, or if the witness requests the change? Will you consent to changes in an order of protection, such as at a complaining witnesses' request, even if a defendant is not agreeing to accept a plea offer?

Full orders of protection are prone to abuse, and shouldn't be automatically sought in every case with a complainant without consultation with the complainant and other possible victims, and without a thorough consideration of its consequences on family unity, economic security, housing, education, and employment. Too often a full order of protection is requested as a default without considering the wishes of the interested parties or the effect on close family relatives, especially children. My committee just held a hearing on the overuse of full orders of protection against parents toward their children, and in particular the protocols for separating children from their parents in non-domestic violence cases and criminal court processing where district attorneys seek an order of protection in non-domestic violence cases.

17. The Immigrant Defense Project has documented a significant increase in ICE arrests in New York State, including a significant increase in arrests at Courthouses across the city. In Queens, ICE has become a regular fixture of the Courthouse, routinely making arrests in and around the Courthouse, sometimes with the assistance of Court Officers. (See https://www.immigrantdefenseproject.org/ice-courts-nys) On one occasion, ICE attempted to arrest a person who had completed services in the Human Trafficking diversion court, and whose case was set to be dismissed. Some District Attorneys have joined the call to prevent ICE from entering courthouses. The current Queens DA has not. What is your position on ICE in courthouses? What steps, if any, will you commit to taking when ICE is present in the courthouse (excusing defendants, dismissing cases, directing staff to walk-out, etc)?

I held a hearing on ICE in the Courts in June 2017, and pushed OCA to establish protocols requiring ICE agents to identify themselves and their targets upon entry to the courthouse. I've called on OCA to bar ICE from courthouses, and earlier this month stood with state legislators sponsoring legislation prohibiting ICE from courthouses unless they first obtain a judicial warrant. We will work with defendants, victims, and witnesses to schedule and structure court appearances to mitigate the threat from ICE, including by waiving unnecessary court appearances.

18. You may be familiar with the NYPD's new policies about requesting DNA from family members of "suspects", those stopped by the police (including juveniles), and others. What is your position on this, and what, if any, role do you see your office playing in advocating for or against this policy? For reference: https://www.nydailynews.com/opinion/ny-oped-the-nypds-new-dna-dragnet-20190206-story.html

No juvenile should be asked to provide DNA evidence without a parent's or guardian's consent, and the government should not maintain DNA profiles of those not convicted of an offense.

19. The New York Legislature is currently considering legislation to change the discovery laws (so-called "blindfold discovery"), including S1716/A1431. What is your position on this bill? What parts of it do you agree with or disagree with?

I support the legislation, and am committed to full open-file discovery.

20. Do you support "discovery by stipulation" or "open file discovery"? If elected, would you be prepared to sign a formal agreement on what would be included in such discovery? What would you include or exclude from open file discovery? Would you agree to open file discovery on misdemeanors, felonies, or both?

I am committed to implementing full open-file discovery in every case, including prior to any deadline for accepting a plea. My office's discovery policy will be made publicly available.

21. What is your position in regards to Brady information? The Brady standard for disclosure is notoriously difficult to interpret, even in good faith, and even harder for courts to enforce. Will you commit to turning over all *relevant* information in a case, regardless of whether it is Brady material? Where a prosecutor decides to withhold relevant information, will you require prosecutors to file a disclosure form, listing the evidence that is not being disclosed and the specified reason why such information is being

withheld (similar to civil discovery laws)? Will you consent to judicial, *in camera*, review of such evidence?

Yes, I will turn over all relevant evidence as part of my office's open-file policy. As we all know, most wrongful convictions stem from some sort of Brady violation. The era of a prosecutor's willful ignorance of exculpatory or impeaching evidence is over in Queens.

22. What will be your policy on prosecutions involving NYPD or other law enforcement officers as defendants? How, if at all, will you prosecute or discourage police corruption and perjury? Will you endorse the use of a special prosecutor in cases involving serious injury or death during an encounter with law enforcement officers?

I am committed to holding police officers and other law enforcement officials accountable for wrongdoing, be it violence against civilians, giving false testimony, or corruption, as my record in the Council demonstrates. We will have a dedicated team within the public corruption unit that will focus on police misconduct, and will exist separate and apart from the daily work of the office as it relates to working with the police to build criminal cases. As for a special prosecutor, the Attorney General already has this responsibility where a civilian is killed in an encounter with the police. There needs to be an examination of how the Attorney General has exercised this authority before I form a judgment about supporting a special prosecutor in cases of serious injury.

23. Civil Rights Law-50 A currently prohibits public disclosure of records relating to police misconduct. Public Defenders and Bar Associations, including the New York City Bar, have called for the repeal of 50-A (https://www.nycbar.org/media-listing/media/detail/city-bar-urges-repeal-of-civil-rights-law-50-a-to-allow-public-disclosure-of-police-records-relating-to-police-misconduct). What is your position on CRL-50A, and how would you handle the disclosure of records of police misconduct?

I support the full repeal of Civil Rights Law 50-a, and we will demand full access to the disciplinary files of officers involved in cases brought to our office for prosecution. (See https://twitter.com/RoryLancman/status/1098664492995612678)

24. Being elected Queens District Attorney requires managing a large office of more than 300 employees, a large budget, negotiating and interacting with the defense bar, defender organizations, media, OCA, legislators, and the Judges and staff of the Queens courthouse. Please describe your experience in the following areas. We are also interested in any plans to compensate for a lack of experience in a particular category.

a. Criminal Justice
b. Trial Experience/Practice of Law
c. Management/Supervision of Personnel
d. Administrative management (budgets, policy, etc)
e. Policy work/advocacy

For 15 years I practiced workplace rights litigation in state and federal court on behalf of plaintiffs, litigating complicated harassment and discrimination, wage theft, and serious workplace injury and death cases.

In my last eleven years as an elected official, I have always managed a staff for my district and legislative agendas as well as overseeing attorneys and non-attorneys who work for the committees I have chaired. When I served as an infantry officer in the Army, I spent a period of time as an infantry company executive officer, responsible for the organization, operations, and provisioning of 100+ members.

As an Assembly Member for six years and a Council Member for five years, I have participated in negotiating and adopting state and city budgets, conducted budgetary and policy oversight hearings of the state and city criminal justice systems, and passed important criminal justice reform legislation. In particular, in the Assembly I served on the Judiciary and Codes committees, with jurisdiction over OCA, state criminal justice agencies, and legislation amending the Penal Law and the Criminal Procedure Law. The Council committee I currently chair has jurisdiction over the Mayor's Office of Criminal Justice, the district attorneys in all five boroughs, the special narcotics prosecutor, the public defender organizations, the civil legal services providers funded by the New York City, and the courts. I am familiar with the operations of each of the city's district attorney offices, and with Queens in particular.

I have the privilege of working closely and regularly with the executive leadership of the major public defender organizations, including the Legal Aid Society, Brooklyn Defender Services, Bronx Defenders, and New York County Defenders, all of whom regularly testify before my committee, collaborate with my office on legislation and the budget, and appear with me (or me with them, as the case may be) in advocacy actions to support criminal justice reforms. The same is true of most of the major criminal justice reform institutions in New York City, including the Vera Institute of Justice, the Center for Court Innovation, and the Institute for Innovation in Prosecution. And of course, we collaborate regularly with community-based organizations and those that run programs for those formerly or at risk of criminal justice system involvement, such as the Fortune Society, the Osborne Association, and CASES. I also work closely with the leadership of OCA (including the the Chief Administrative Judge), whose judges frequently testify before my committee.

25. Please describe a plan for what changes in training, policy, personnel, etc, that you would make in your first 30 days in office. In your first six months? What *public* benchmarks could the Queens community look to at the one year mark, and at the four year mark, to see how you have changed the Queens District Attorney's office?

This questionnaire, along with those from DSA and the Queens Community Group, are very comprehensive and I include detailed policies on my website as well. These are my benchmarks. I will do everything I've said I will do. That is what the public will see, and how they will measure my success.

On June 26th -- the day after the primary -- I will establish a formal transition advisory committee co-chaired by some of New York City's leading criminal justice reform leaders, drawn from the relationships I reference in the previous question, with broad judicial, prosecutorial, defense, academic, administrative, community, advocacy, and labor experience, who will look like the borough of Queens. Modeled after the Brooklyn DA's "Justice 2020 Initiative," the committee will translate the agenda I've laid out into concrete policies ready for implementation the day I'm sworn in, and assist in recruiting an entire new leadership team at the Queens DA office.
