

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? *As District Attorney, I will have to consider each case on its own facts to determine if probable cause existed for the police search and seizure. However, I will ensure that my prosecutors carefully scrutinize these types of cases to determine if there is probable cause other than an “odor of marijuana” or witnessing someone smoking marijuana. If there are no other articulable facts that support a charge of a crime other than simple possession marijuana, then I will dismiss the case.*
 - 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? *Again, I will have to consider each case on its own facts, without prejudging the facts or creating an automatic rule, to determine if probable cause existed for the police search and seizure. That being said, if a search and seizure was solely based on an officer’s testimony that they smelled the odor or marijuana or witnessed the accused smoking marijuana, then I will consider*

the stop to be unjustified and beyond the parameters of the law. Consequently, the case will be dismissed.

- c. Will you push for the NYPD to stop engaging with citizens over marijuana alone?
I will decline to prosecute all misdemeanor level marijuana offenses.
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? *Under these limited facts, I will have the accused show proof of his lawful possession of his firearm in another jurisdiction, enter into a diversion program without pleading guilty to a crime with the goal of ultimately having the case dismissed.* Would you treat them the same or differently as someone who is found in possession of a firearm elsewhere in Queens? *Under these facts and circumstances, I would not treat the individual arrested at the airport after they declared this firearm to TSA in the same manner that an individual that unlawfully possesses a firearm in the public streets of Queens County. I believe that former should not be treated as a violent criminal under these circumstances without more evidence that he used the weapon to threaten or harm another person.*
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? *I believe an automatic policy requesting remand on all these cases is wrong and unnecessary. My policy will create a presumption of release in these cases with very few exceptions. Some exceptions would consider the underlying crime and circumstances of the warrant. For instance, an arrest warrant for a serious crime such as rape, murder or attempted murder may require a recommendation of remand. As an alternative to cash bail or commercial bond, I will direct my prosecutors to recommend surety and appearance bonds, provided under New York Criminal Procedure Law 520.10 (1), to ensure that a criminal case proceeds expeditiously through the criminal justice system. Recommending surety and appearance bonds will allow the defendant to post either partially secured and*

unsecured bonds. What factors would you consider in that decision? ***Factors that I would consider are the circumstances of the arrest warrant; the charge underlying the warrant; the accused criminal record; previous record if any in responding to court appearances when required or with respect to flight to avoid criminal prosecution; any violation by the principal of an order of protection issued by any court for the protection of a member or members of the same family; and the accused history of use or possession of a firearm.***

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? ***Yes.*** In what circumstances? ***I would allow a shorter-sealing period whenever an accused makes a reasonable claim of financial hardship or collateral immigration consequence.***
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: ***Yes, because I intend to decriminalize poverty and decline to prosecute low level quality of life offenses.***

<https://nypost.com/2017/08/09/new-york-vacates-hundreds-of-thousands-of-summonses/>)? For what category of charges, or with what conditions? ***I would dismiss open summonses that are older than 2 years and relate to minor offenses such any misdemeanor criminal possession of marijuana charge, misdemeanor trespass, loitering, riding a bicycle on a sidewalk, drinking in public, disorderly conduct, public urination and being in a park after dark.***

b. Would you commit to dismissing summons for those who appear in court, rather than offering an ACD or fine? ***YES.*** 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)? ***any misdemeanor criminal possession of marijuana charge, misdemeanor trespass, loitering, riding a bicycle on a sidewalk, drinking in public, disorderly conduct, public urination and being in a park after dark.***

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? ***I would allow ADAs to dismiss a case at arraignment when there has been evidence presented that the accused is innocent or no crime was committed.***
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? ***I believe the vast majority of welfare fraud cases should be handled through administrative and civil proceedings and not criminal prosecution. However, I would consider prosecuting cases involving the most egregious and repeat offenders when administrative and civil proceedings have failed to adequately address the misconduct.*** What offers would you make on cases involving welfare fraud, including when a defendant is unable to repay the full amount? ***If the accused claims a substantiated financial hardship, then I will all the individual to perform community service in lieu of repayment of the stolen funds.***
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? ***Fines and programs costs should not be levied against an accused without regard to the person’s ability to pay. When a person financial means is not considered, then the fines, surcharges and program fees trap indigent criminal justice involved individuals in a cycle of incarceration. I will support legislation to fund court administration without the excessive use of fines, surcharges and fees. I will also support assessing fees, fines and surcharges on a sliding scale based on the income and assets of the criminal justice involved individual. Create a policy that allows the accused to benefit from a reasonable payment plan. Lastly, I will create a policy to requires ADAs to support defense motions to reduce or waive fees based on documented indigency.*** Will you ensure that all defendants, regardless of poverty, have access to programs? ***Yes***

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? ***I believe mandatory court fees and surcharges create a defacto debtors’ jail in our criminal justice system because individuals can effectively be sent to jail simply because they can’t afford to pay fines or fees. This practice of punishing individuals be of their poverty or financial hardship is wrong.*** Would you advocate for their elimination or other changes? ***Yes. I would advocate for assessing fees and fines on a sliding scale based on income and assets, taking into account debts and financial obligations such as child support and health care costs. I will also recommend reasonable payment plans, and oppose requiring people to return to court again and again because of incomplete payment Lastly, I would support defense motions to reduce or waive fines and fees based on indigency.***
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? ***YES*** On felony pleas, misdemeanor pleas, or both? ***BOTH*** With what limitations or conditions? ***Program must be accredited with the State or City.***
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).
- Non-violent misdemeanors - NO CASH BAIL
 - “Violent” misdemeanors (including Assault, Menacing, etc.) – NO CASH BAIL
 - Non-violent felonies – NO CASH BAIL
 - Violent felonies – NO CASH BAIL
 - Preferred alternatives to cash bail if true flight risk – ***I will instruct my ADAs to request appearance bonds either secured, partially secured or unsecured. I will work tirelessly to eliminate cash bail. I would direct my prosecutors to recommend “release on recognizance” for all misdemeanors and non-violent felonies when authorized under New York Criminal Procedure Law 510, 530, and other provisions of law relating to the specific kinds of criminal action and proceedings. Instead of cash bail recommendations, I will direct my prosecutors to recommend defendants be released with non-monetary***

conditions imposed such as reporting to a pre-trial services agency. The accused should also be allowed the option to utilize an alternative form of Appearance Bonds such as unsecured or partially secured bonds as provided by New York Criminal Procedure Law 520.10(1).

- f. Would you request or support changes in bail conditions if it becomes apparent a defendant cannot pay the bail set? **YES**
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? ***I would support the use of electronic monitoring devices in lieu of incarcerating an individual pending trial.*** In what cases, if any, would you advocate for such a system? ***Any circumstance where the accused and demonstrated himself to be a high flight risk.*** 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>.
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? ***I will not have a policy that automatically excludes a person accused of a crime from being evaluated and receiving a diversion program. I believe all criminal justice involved individuals to be evaluated to determine the underlying driver of their alleged misconduct; i.e. drug addiction, mental illness etc.. Once we determine the underlying driver of the criminal conduct we show allow the individual to avail himself to an appropriate diversion program. How, if at all, do you plan to utilize these court parts or make recommendations for cases to be sent to them? All criminal justice involved persons that request to be evaluated for a diversion program will be evaluated and considered for the appropriate diversion program.***

14. Will you charge crimes committed at schools, by students? **NO** For instance, fights between students, drug possession at school, disorderly conduct, etc? **NO, because I believe our schools are over policed and we must stop the school to prison pipeline by declining to prosecute low level arrests made in schools.** In what circumstances or on what charges will you dismiss these cases without prosecution? **I will decline to prosecute all low level crimes because I believe we need to treat kids like kids and assist them make better decision using social services and not the criminal justice system. I would also like to promote mediation programs in our school to reduce student violence.** What, if any, specific charges would you decline to prosecute if committed by students at school? **any misdemeanor criminal possession of marijuana charge, misdemeanor trespass, loitering, disorderly conduct, public urination and other low-level offenses.** What, if any, diversion programs would you offer or require for such cases? **For serious violent cases or possession of a firearm, I will recommend a diversion program that will help provide the young person a second chance at being a productive citizen in our community. For instance, the Osbourne Association or Fortune Society are great diversion programs that our youth can benefit from.**
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? **My policy would create a presumption to consent for removal to Family Court.** In what circumstances would you refuse to consent to removal? **There would have to extraordinary circumstances relating to nature of the charges in a case that would justify declining consent to remove to family court.** 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)? **Yes** What, if any, charges would you refuse to prosecute for defendants under the age of 18? **any misdemeanor criminal possession of marijuana charge, possession of drug paraphernalia, misdemeanor trespass, loitering, disorderly conduct, public urination and other low-level offenses.**
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? **YES.** 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? **YES**

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? I oppose the surveillance and arrest practices of ICE in our court houses. 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)? **First, I will direct my ADAs to coordinate with defense counsel to arrange time specific court appearance to allow them to escort their clients to court for a brief court appearance; Second, I will direct my ADAs to waive the appearance of the accused when there court appearance is a for administrative purposes; Third, I will direct my ADAs to collaborate with the Court and Defense Counsel to handle motion practice, discovery and other administrative matters off calendar without requiring the accused to appear in court. I will advocate for and support the Protect Our Courts Act. I believe that the surveillance and arrest activities of ICE in our courts disrupts the administration of justice in our County and makes everyone in Queens less safe.**
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? **I believe that the NYPD's new policies requesting DNA from family members of "suspects", those stopped by the police and other is an overreach of their authority and goes far beyond a legitimate law enforcement purpose.** For reference: <https://www.nydailynews.com/opinion/ny-oped-the-nypds-new-dna-dragnet-20190206-story.html>
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? I agree with the pending legislation. What parts of it do you agree with or disagree with? **Current discovery rules have historically been misused by prosecutors to create unfair leverage in the plea negotiation process. Some prosecutors' practice of withholding discovery until the statutory deadline makes it difficult for the person accused of an offense to negotiate a fair and reasonable plea deal and/or to**

appropriately prepare for trial. Under the current rules, defendants are not allowed to see key information about their cases such as police reports and witness lists until just before trial. As a result, they're often forced to negotiate plea deals without any idea of what sort of evidence the prosecution has against them – and to try and prepare for trial without any idea of what witnesses will testify against them – and that result is neither fair or equitable.

Whether, or not, the pending legislation is enacted I will implement similar changes in Queens County when he is elected DA. I believe in 'open file discovery' – which means that defendants will be allowed to see all the evidence against them as soon as the prosecutor has the evidence in their possession without any unreasonable delay.

20. Do you support “discovery by stipulation” or “open file discovery”? ***YES*** If elected, would you be prepared to sign a formal agreement on what would be included in such discovery? ***YES*** What would you include or exclude from open file discovery? ***Witness and victim pedigree and contact information will be redacted.*** Would you agree to open file discovery on misdemeanors, felonies, or both? ***YES***

21. What is your position in regards to Brady information? ***Prosecutors have an ethical obligation to provide any and all Brady material to defense as soon as the prosecutor receives that 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? ***YES*** 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)? ***YES*** Will you consent to judicial, *in camera*, review of such evidence? ***YES***

What will be your policy on prosecutions involving NYPD or other law enforcement officers as defendants? ***I will thoroughly investigate and prosecute any allegation of misconduct by any law enforcement officer.*** How, if at all, will you prosecute or discourage police corruption and perjury? ***These types of prosecution will be conducted by experienced and well trained prosecutor committed to following the facts of the case where ever they lead and doing justice in every case. Recently we learned that it is happening again within the NYPD Vice unit. I will make sure that the current indictments against members of the NYPD Vice Unit and 109th Precinct are prosecuted. In addition, I will ensure that any further allegations made against any member of the NYPD Vice unit operating in Queens County is thoroughly investigated by the Queens District Attorney's Office Detective Squad. It is no surprise to me that the accused officers involved in this recent corruption scandal have accumulated multiple excessive force complaints and civil suits for violating individuals'***

constitutional rights. As District Attorney, I will investigate and prosecute officers that engage in any criminal activity. Will you endorse the use of a special prosecutor in cases involving serious injury or death during an encounter with law enforcement officers? **YES**

22. 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 believe CRL 50A should be repealed. The disciplinary history of any witness officer will be made available to defense counsel prior to trial.***

23.

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 - ***18 year career prosecutor with practice in local, state and federal courts including military tribunals.***
- b. Trial Experience/Practice of Law ***Tried over 75 trial in local, state and federal court for offenses ranging from misdemeanor level to homicide.***
- c. Management/Supervision of Personnel – ***I supervised and managed the work of Assistant District Attorney, Assistant Attorney Generals and Military Trial Counsels along with the legal support staff. As Deputy Chief of the New York State Attorney General’s Office Special Investigation and Prosecutions unit I supervised over 20 Assistant Attorney Generals and 15 investigators statewide***
- d. Administrative management (budgets, policy, etc) – ***As a military prosecutor I was responsible for the administrative management of a the Military Justice Division at a Army base with a population of 25,000 active duty service members and their families and 10,000 reserve/ national guard service members.***
- e. Policy work/advocacy – ***As Deputy Chief of the New York State Attorney General’s Office Special Investigations and Prosecutions unit I was responsible for assisting the Attorney General implement and support criminal justice reform initiative throughout the State of New York. This included conducting evaluations and making recommendations with regard to the training and use of force policies of local police department statewide.***

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?

30 Day Mark:

- End the practice of requesting cash bail on all misdemeanors and felonies
- End the Pre-Indictment 180.80 Waiver Police
- End the practice of pre-arraignment CBQ interviews
- Issue a directive prohibiting any QDA employee may provide information to ICE regarding a pending criminal matter or an individual accused of an offense
- Issue an Immigration Hardship Plea Policy
- Transition new members into the Executive Staff of the Queens County District Attorney's Office
- I will direct my Legal Requirement bureau and Human Resources unit to create systematic measures to avoid perceived and actual conflict of interests created by the practice of nepotism and cronyism. In my administration, every newly hired, and current, ADAs will be required to complete a conflict of interest screening form
- Create an open file discovery police for all misdemeanors and felony cases

6 Month Mark:

- Transition new members to the Management Staff of the Queens County District Attorney's Office
- Create the Conviction Review Unit and Independent Advisory Council comprised of Criminal Justice Reform Organization, community leaders, clergy and those individuals who were wrongfully convicted and exonerated.
- Create the Post-Sentencing Unit
- Create the Alternatives to Incarceration Unit
- Create a Hate Crimes Bureau adequately staffed with specially trained ADAs
- Implement quarterly town hall meetings throughout the county
- Create a Civil Rights Bureau adequately staffed with specially trained ADAs
- Increase access to diversion program for all individuals accused of a crime

1 Year Mark

- Re-Organize the major division of the Queens District Attorney's Office to include
 - a) Community Partnership Division;
 - b) Social Justice Division;
 - c) Major Crimes Division;
 - c) Economic Crimes Division;