

OREGON DA FOR THE PEOPLE

District Attorney Candidate Forum Follow-up

ENDING MASS INCARCERATION

Data shows that prison populations are driven by violent crime, not low-level drug crime, so that means that to end mass incarceration we must dramatically change how we address violent crime. Do you support mass incarceration, or do you support changing how we address violent crime? How would you address violent crime? How would you seek to undo the exorbitant sentences that your office has been handing out for decades? How would you get people who commit violent crime out of prison?

Knight:

The prison industrial complex in the United States negatively impacts too many Americans and needs to be addressed. Here in Oregon, we are fortunate that we don't prioritize incarcerating non-violent offenders, keeping people out of the system when they don't need to be. People who commit serious, violent crimes often need to be imprisoned. I will continue to focus on using effective alternative programs to address the needs of non-violent offenders, and prioritize doing a better job in and out of the criminal justice system supporting impoverished and underrepresented communities.

Schmidt:

The United States has the highest incarceration rate in the world, with over 2 million people imprisoned nationally – far out of proportion to our population. And this is not just a national phenomenon, Oregon's incarceration rates for men and women continue to hover right around 25th in the nation. And for all of our "tough on crime" approach to public safety, we are not more safe than countries that use a fraction of the prison that we do.

The data is clear: While we do use prison for property and drug crimes, just addressing those categories of offenses will never by itself be an adequate solution to issues of mass incarceration. If we are ever to meaningfully decrease our prison population it will have to be with a new strategy specifically aimed at addressing violent crime.

First, we should repeal Measure 11's mandatory minimum sentences. In Oregon, approximately 70% of people sentenced to a Measure 11 crime have no prior felony criminal history, and nearly 85% have not served a previous prison sentence. Removing people from our community is sometimes necessary, but it should not be our first option, nor should it occur without regard for the person's individual circumstances. These decisions should be made by judges, not prosecutors. Restoring discretion to our judges to decide who should go to prison or remain in the community

would allow for a neutral party to hear arguments from all sides and consider whether or not prison is the most appropriate and necessary outcome.

Second, I would seek resources to establish a unit within the DA's office to re-examine old cases, evaluate claims of innocence, and consider new DNA evidence when it is available. This unit could also look at particularly long sentences that have been imposed in the past and consider if it would be consistent with public safety and rehabilitation to recommend commutation.

Third, I have pledged to explore utilizing restorative justice programs, such as those that have been shown to yield positive results in Brooklyn. In some cases, it might make sense to use these practices as a complement or alternative to prison sentences. All of these strategies must include getting survivors of crime the additional resources that they need to heal, and listening to them in what it will take to meaningfully hold offenders accountable in a way that gives them assurances of their safety and wellbeing.

What will you do to significantly promote diversion and community-based treatment in lieu of incarceration in relatively minor felonies, particularly those related to addiction, homelessness and mental health issues?

Knight:

Multnomah County has a set of strong mechanisms for alternatives to incarceration through our community courts system. The problem is that these programs are understaffed and underfunded, limiting our ability to divert offenders and provide supports that help them avoid reoffending. We also need to look at the underfunding of services for those experiencing addiction, mental health challenges, and homelessness that often create situations where people are more vulnerable to experiencing or committing crimes.

Schmidt:

If elected, I will make it a matter of office policy to prioritize addiction counseling and mental health treatment. Historically, some prosecutors have required defendants to negotiate away their right to treatment while incarcerated. This makes no sense. I pledge to never stop defendants from receiving the treatment and services they need to recover. If the underlying causes of criminal activity are not addressed, we cannot expect defendants to not reoffend when they are released from prison. As Director of the Oregon Criminal Justice Commission, I know how successful drug courts, veterans courts, and mental health courts can be, because my agency funds those programs. I would also like to see a new kind of specialty court in Oregon that is focused on working with individuals experiencing homelessness. I believe that the way to truly improve public safety is by treating addiction and mental health first. It's the smart thing to do, and it's the right thing to do.

DA OFFICE POWERS AND PROCEDURES

How will you decrease the power the DA's office has?

Knight:

I am interested in supporting a fair, fully funded District Attorney's Office that is responsive to the needs of all community members. Through a collaborative, community-focused approach, we can create a safer and more accessible Multnomah County for all.

Schmidt:

I think the criminal justice system is biased in favor of the prosecution in several areas. Some of the positions I am advocating for will make the system more balanced, including the following: (1) We should eliminate Measure 11 and mandatory minimum sentences. (2) We should eliminate cash bail, which unfairly holds some defendants in jail and applies undue pressure for them to plea to crimes they may not have committed. (3) I have pledged not seek the death penalty. (4) I will advocate for increased funding for public defenders so they have more time to spend with their clients and are more fairly compensated. (5) I support requiring unanimous juries in trials. (6) My office will share all evidence with defendants and their defense attorney.

How can the DA office support those in navigating new charges through the process?

Knight:

The District Attorney should be an advocate for fully funding the court and indigent defense services – these resources will help defendants who are facing new charges.

Schmidt:

One of the big challenges I see for defendants is that public defenders are so underfunded. As district attorney, I have pledged to advocate for increasing funding for public defenders and striving for pay parity with deputy district attorneys. With better funding, public defenders will have more time to spend with each of their clients, allowing them to help their clients navigate the system. Another structural change we should implement is eliminating cash bail. It is very difficult to prepare a case when you're stuck in jail, and so allowing defendants who do not pose an immediate public safety risk to be released is the fair and equitable thing to do. Also, as DA, I have pledged to provide all discovery files to the defendant and their defense attorneys so they can be fully prepared to make their case in court.

CRIME VICTIMS

As DA, how would you respect the varying desires of crime victims, including victims of violent crime, many of whom want services and safety, not excessive prison sentences?

Knight:

Victims play an essential role in the criminal justice system. The collective voice of victims and their families should be protected, but balanced against the system's other equities. Additionally,

a fact that I believe is often lost in virtually every discussion I have seen about the criminal justice system is that victim communities are often disproportionately comprised of poor and underserved populations. We need to do a better job of serving these communities – this means everything from supporting immigrant populations fearful of coming into contact with any facet of the system, to providing child care for the single parent stuck at the courthouse for an afternoon. Listening to the viewpoints of crime victims should always be a priority for the District Attorney’s Office. I will continue to ensure that the voice of the victim is always presented – including when that voice is an advocate for a less severe sentence. To do this, my office will take steps to ensure that the judge receives the victim’s perspective before any sentence is imposed.

Schmidt:

It’s time we stop telling victims what we think will heal them, and actively listen to what victims and survivors say they need to heal. When I was a deputy district attorney in Multnomah County, I heard from victims of crime who were all over the spectrum in what type of result they wanted to see from the justice system. Some wanted the offender to spend a long time in prison. Others wanted to ensure that the offender never committed a crime again, and that the issues driving their conduct were addressed. Many victims and survivors I spoke with just wanted to move on with their lives. Many had questions for the person who hurt them, like “Why did you do this?” or “Why me?”

It’s time for the Multnomah County District Attorney and prosecutors across the country to consider restorative justice programs for crime victims who opt for them. If elected, I intend to ask victims and survivors “What do you need to heal?” Restorative justice should be a central part of criminal justice reform in Multnomah County in 2020. I’ve published an essay on Medium on this topic, as well.

What will you do during your campaign and if elected during your first year to properly process rape kits (as my preschooler’s rape 23 years ago)?

Knight:

The timely processing of rape kits should be a top priority for law enforcement and the District Attorney’s Office. In my first year, I will continue to push the existing backlog elimination project to get through unprocessed evidence and I will seek additional grant based funding to speed up the process, and add victim support to address the concerns of victims whose cases were left to languish for years.

Schmidt:

I was very glad to see the Oregon Legislature pass Senate Bill 1571 in 2016, which allocated funding to the eliminate the backlog in rape kit processing. This bill was sponsored by State Representative Carla Piluso, and I know she has been closely tracking its progress since it was passed. If elected, I will be committed to ensuring we never have another backlog in Oregon.

PLEA BARGAINS

About 90% of Federal and State convictions are through plea bargaining. Criminal trials are rare. Do you think this is a good thing? If not, do you support community discussion on abolition of the practice?

Knight:

I think that plea agreements offer tradeoffs for both defendants and the state, and that there are pluses and minuses to each approach. Trials can mean a defendant waits a year or years before the matter is resolved and also can lead to disparate outcomes based on the adequacy of the defense and jury composition – an issue highlighted by Oregon’s non-unanimous jury provisions. On the other hand, an excessive number of trials can be a sign that defendants are being over-charged or that the District Attorney’s

Office is relying on weaker evidence. I think both trials and pleas – when employed properly – have value in the criminal justice system and a community conversation can help correct shortcomings that can arise in either process.

Schmidt:

I recognize that, at times, the plea bargaining process can be coercive and can run the risk of forcing people to plea to crimes they may not have committed. We should think hard and have a discussion about how we can change that. People accepting guilt for crimes that they didn’t commit in exchange for immediate release or drastically lower penalties than they could expect after a trial does not accomplish justice, and it risks the legitimacy of the entire system. Eliminating the death penalty, cash bail, and Measure 11’s mandatory minimum sentences would be a good start towards making the plea process less coercive. I’m also interested in making the plea process itself more public, by creating a system that would allow the public to view the aggregated sentences imposed by my office, and hold me accountable.

HUMAN TRAFFICKING

Why can’t trafficking be prosecuted simply as trafficking? Why do you think the criminalization of trafficking requires the criminalization of sex work?

Knight:

The District Attorney’s Office must follow the laws as they are written, so prosecutors are forced to use laws that may criminalize sex work while addressing trafficking. I would not prioritize the prosecution of sex workers in trafficking prosecutions, but the better solution would be to lobby the legislature to enact laws that address traffickers – something I would be interested in pursuing.

Schmidt:

I do not believe that the criminalization of sex trafficking requires the criminalization of all sex work. I see two very different activities – one coerced and one consensual. I am very interested in learning how we can change state law to uncouple these two things while still giving prose-

cutors the tools they need to charge those who are trafficking young people. I can say that, as district attorney, my office will not be prioritizing prosecuting consensual sex work. Instead, we must focus our resources on those who are abusing children and forcing people into what is essentially slavery.

TREAT KIDS LIKE KIDS

As a public school teacher, I believe kids should be treated like kids. Can you commit to declining to prosecute youth for misdemeanors and school-based arrests? Can you commit to always declining to prosecute cases referred by School Resource Officers, commonly referred to as SROs?

Knight:

Young people are still developing and we need to allow for rehabilitation and redemption. With respect to juveniles and Measure 11, I support the recent legislative changes that recognize the need to treat juvenile offenders differently and believe them to be a step in the right direction. But I cannot make such an expansive pledge because I would defer to professionals like you for guidance on a case-by-case basis, understanding that some types of cases (such as sexual abuse and assault), regardless of who referred the case to the District Attorney's office, should be prosecuted.

Schmidt:

I believe that it should be up to communities to decide if their local schools have school resource officers, and if so, what authority those officers have. I cannot make an absolute pledge to never prosecute any cases referred by school resource officers, because they may refer violent felonies, sexual assault cases, hate crimes, or other offenses that are truly disruptive to communities. What I can say, as someone who has been a high school teacher, is that over prosecution of young people – and especially young people of color – is real and contributes to the school-to-prison pipeline. That's why I supported, both professionally and personally, Senate Bill 1008, which eliminated mandatory adult sentences for youth. I believe it is fundamentally unfair to prosecute young people as adults, when we know that young people's brains are not fully developed until they reach their 20s. To that end, I am committed to continuing working with partners to ensure our laws treat kids as kids and keep our communities safe.

PAROLE

What do you say about giving the mandatory supervised release (MSR) offenders a 10% reduction in sentence for good behavior? (That is the Federal guideline.)

Knight:

As a federal prosecutor, I think that's something we should look into employing at the state level.

Schmidt:

I support making this change. I believe it would help incentivize good behavior and a focus on rehabilitation.

CASH BAIL

If cash bail is abolished, what's your plan to determine release?

Knight:

I find there is a lot of merit in the approach used by the District of Columbia, providing individualized attention to each defendant to identify and address risk factors, such as addiction, that would lead them to not appear at trial. The Bail Reform Act in the federal system also provides helpful guidance – it sets criteria for release that take into account the risks posed by release and the needs of the offender. This approach requires the use of supervision resources to provide staffing support and ensure access to services, and I would be a strong advocate for adding those resources as part of eliminating cash bail.

Schmidt:

I believe cash bail should be eliminated, and I was the first candidate in this race to come out with this position. It fails both by jailing those who are not dangerous and by allowing dangerous individuals with financial resources to be released. I'm a strong advocate of eliminating cash bail, allowing judges to make release determinations based on risk of harm to the public and the likelihood that a person will show up to court, and then expanding pretrial services that enhance public safety and decrease the number of people who fail to appear to court. Several states and localities around the country have essentially eliminated cash bail while maintaining community safety. Oregon should learn from their models.

ADVOCACY

How can the DA advocate for police change around stuff that ties their hands, i.e. Measure 11, cash bail, etc.?

Knight:

Policy changes at the state level like Measure 11 or cash bail require convincing legislators from around the state to adopt change. I will be an outspoken advocate for Multnomah County in looking at appropriate changes to Measure 11 and replacing an inequitable cash bail system. It is also critical that our next DA advocates for culture change across the other 35 district attorneys offices so that legislators outside the Portland Metro area are also hearing from their county officials on the need for change. I am the only candidate in this race that if elected will stay engaged with the Oregon District Attorney's Association, working to persuade its members on the merits of criminal justice reform. I will never let that organization silence my voice in the discussion, and I see clear value in remaining at that table to foster change.

Schmidt:

Legislative action is required for some criminal justice reform measures, and I am committed to advocating in support of progressive reform at the legislature if I am elected. As the district attorney for Oregon's largest county, and as someone with good relations with key members of the

legislature through my work leading the Oregon Criminal Justice Commission, I believe I would be well-positioned to advocate for reform. Some of what needs to be done can be managed through a case-by-case agreement of the parties and victim to pursue alternative sentencing, or through modifying my office's policies toward the pursuit of bail. But real change - the sort of change that can outlast one administration, or be applied consistently - will require legislative action. I will lead that fight.

Too often, the Oregon District Attorneys Association has been an obstacle to reform at the state level. That is why I have pledged to withdraw Multnomah County from the Association if elected. I believe that the Multnomah DA should be an advocate for the people and values of Multnomah County, first and foremost. And at this time, I do not see the priorities of the ODAA as being aligned with those of Multnomah voters.

ICE

What's your position on ICE?

Knight:

I support Oregon's Sanctuary State law. To process asylum and visa applications, I believe there is a need for federal immigration enforcement, but that our federal agencies should always be looking to how they can improve the work they do and address unintended consequences.

Schmidt:

I applaud Oregon Supreme Court Chief Justice Walters' decision to ban ICE officers from making arrests in Oregon courthouses. I was very disappointed to see US Attorney General William Barr's rebuke of her decision, because I believe that if we want to increase public safety, all Oregonians should feel safe accessing the courthouse as a defendant, as a witness of crime, or as a victim. In my campaign platform, I state I am committed to following Oregon law and not using local resources to support ICE's work on federal immigration policies. Furthermore, I believe prosecutors should consider possible immigration consequences when handling criminal cases. One person receiving a fine or a small amount of jail time for a crime that has the potential to get another person deported is not equitable or just. If a conviction could get a defendant deported, we need to think very carefully about how we charge and resolve that crime.

PRISONER RIGHTS

Do you think Multnomah County [prisoner] work crews should be paid a minimum wage?

Knight:

I appreciate the opportunities these programs offer for workforce training and early release of inmates. I would like to see more details about how this change would impact county resources and the opportunities to work with contracting nonprofits providing benefits in the community.

Schmidt:

Yes. I would be supportive of increased funding to pay these workers, and doing so could also have the benefit of helping crime victims receive restitution for their losses. Fundamentally, I believe people should be compensated fairly for their labor, and that the state should not make exceptions for its own benefit.

In addition to replying with answers to the questions below, please share how you have engaged with impacted communities since the forum, and what your plan is to continue doing so up to and beyond the election in May 2020.

Knight:

It is my commitment to stay engaged with all stakeholders in our criminal justice system, in particularly impacted communities. I have reached out to dozens of community leaders and leaders of color in this campaign and will continue to do so. I would welcome the opportunity to continue to meet with groups and individuals through the election and beyond. And I would also like to seek out public feedback on the office through community forums as part of our budgetary process and as we approach significant policy questions for the District Attorney's office – whether that be on local policies or state questions.

Schmidt:

Over the course of this campaign, I have reached out to many people and organizations who care about criminal justice in Multnomah County. These include victims of crime, formerly incarcerated individuals, people who work in law enforcement, defense attorneys, elected officials, community of color organizations, labor unions, criminal justice reform advocates, and many others. My outreach has included one-on-one discussions, group discussions, site visits, and more.

If I am elected, I pledge to continue this outreach. Elected officials should have open door policies for visiting with their constituents, but really we should expect more than that. I believe the elected leaders themselves have the obligation to proactively engage with communities who are affected by their office policies before, during, and after these policies are developed. And that doesn't just mean office hours. As District Attorney, I will visit community stakeholders in their own spaces, and on their own terms. I will not wait for them to come to me.