Kevin D. Lawlor, Esq.
Office of the Deputy Chief State's Attorney
300 Corporate Place
Rocky Hill, CT 06067

Dear Attorney Lawlor:

It has come to our attention that you may be pursuing the opportunity to assume the role of Connecticut's next Chief State's Attorney. Thank you for taking a step to advance your role in ending mass incarceration!

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The ACLU Connecticut Campaign for Smart Justice is grounded in the knowledge that the people closest to the problem are closest to the solution. We are an unprecedented cohort of advocates who have been directly impacted by Connecticut's justice system.[i] We are working to usher in a new era of justice, and we are not alone. We are part of the nationwide Campaign for Smart Justice, a multiyear effort in all 50 states.

A direct result of the ACLU Connecticut Campaign for Smart Justice's work is Public Act No. 19-59, An Act Increasing Fairness and Transparency in the Criminal Justice System, which was signed into law on July 1, 2019 by Governor Ned Lamont.[ii] Public Act No. 19-59 will shine a bright light on the role of State's Attorney by establishing new prosecutorial data collection and public reporting requirements for the 13 districts across the state. After the successful passage of Public Act No. 19-59, the public is now watching this selection to gain a better understanding of how each Chief State's Attorney candidate views their role in (a) the implementation of Public Act No. 19-59, and (b) within Connecticut's justice system as a whole.

We invite you to complete our *ACLU Smart Justice Connecticut Survey for Connecticut Chief State's Attorney Applicants*. While the Chief State's Attorney role is not an elected position, this public position is critical in protecting the safety and well-being of Connecticut residents. As such, the public has a right to know your views on various topics referenced within the pledge.

All of the identified Chief State's Attorney candidates have received a request to complete this *ACLU Smart Justice Connecticut Survey for Connecticut Chief State's Attorney Applicants*. Please provide your full response by December 31, 2019.

Our pledge consists of 17 Yes/No questions, each with the opportunity to provide a 250-word comment. Where neither "Yes" nor "No" is selected, the response will be recorded as "Did Not Respond." We also a request that you submit a brief 1 paragraph biography with your responses to this pledge. Each candidate's response will be posted on our website, as well as circulated to our more than 41,000 ACLU supporters in Connecticut and the broader public.

Please direct any questions to Claudine Fox, Campaign Manager at 860-461-8477 or cfox@acluct.org.

Anderson Curtis

Field Organizer
ACLU Connecticut Campaign for Smart Justice

Gus Marks-Hamilton
Field Organizer
ACLU Connecticut Campaign for Smart Justice

The American Civil Liberties Union of Connecticut is a nonpartisan, non-profit membership organization that defends, promotes and preserves individual rights and liberties under the U.S. and Connecticut constitutions in state and federal court, the General Assembly and the state's 169 towns and cities.

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ACLU Smart Justice Connecticut Survey for Connecticut Chief State's Attorney Applicants

1. Will you commit to fairness and transparency by supporting legislation requiring uniform policies and procedures to be promulgated by the Division of Criminal Justice Advisory Board for all 13 state's attorney offices? Please give a clear "Yes" or "No" to the question and any explanation.

Yes. Fairness and transparency in prosecution are critical to assuring the public that prosecutors are acting in an open and consistent manner. That is why I fully supported and actively assisted in the creating and passage of PA 19-59. Currently, the State's Attorneys and the Administration of the OCSA are working together to standardize many policies and procedures that may vary by Judicial District. Standardized discovery procedures, uniform procedures to implement ESI and the handling of requests for assistance by ICE are all areas where we are making progress. This may obviate the need for legislation in these areas.

2. Will you commit to transparency and professional accountability for state's attorneys by supporting legislation requiring biennial performance evaluations of all 13 state's attorneys using data from PA No. 19-59 that focuses on creating fair, consistent, and proportional outcomes and measuring overall well-being of communities impacted by prosecution? Please give a clear "Yes" or "No" to the question and any explanation.

No. I believe explicit legislation might be both overly restrictive and have unintended consequences. If appointed as Chief State's Attorney, I will request annual self-evaluations from each State's Attorney and Deputy Chief State's Attorney. Assuring that each State's Attorney evaluates their performance on a yearly basis is critical to maintaining a fair and efficient agency. They should be evaluated on factors tracked pursuant to PA 19-59,

compliance with the performance measures set out in their biennial business plans, efforts at community engagement and training of staff to name just a few. I believe continuous feedback and guidance from the Chief State's Attorney will be more beneficial than a rigid legislative mandate that rates performance on ill-defined terms such as "overall well-being of communities".

3. Will you commit to transparency by complying with the data collection requirements of PA No. 19-59 and implementing a uniform case management system for the Division of Criminal Justice by the end of 2020? Please give a clear "Yes" or "No" to the question and any explanation.

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Yes. The DCJ is currently striving to comply with the requirements of PA 19-59. If selected as CSA, I will prioritize the rollout of our Case Management System (CMS). One of my first recommendations to CSA Kevin Kane, ret'd. was to lobby the legislature for funding of 13 new IT Paralegal positions, one for each Judicial District, to assist with this implementation. This took even more priority upon the passage of PA 19-59. Currently, the DCJ has only four IT staff servicing 36 separate locations. These new IT personnel are critical to assure a smooth rollout of the system. They will then transition into the role of data compliance and analysis in each District. This will assure that data entry is accurate and uniform. Accuracy and uniformity are critical in assuring that any analysis is thorough and discussions that flow from it are beneficial. We were unsuccessful in the last legislative session at securing funding for these positions. If appointed, I will return to the legislature to request the funding and will supplement it, where available with existing DCJ funds.

4. Will you commit to providing quarterly updates over the duration of 2020 regarding the implementation process of the case management system by reporting on (a) the number of courts fully equipped with the case management system, and (b) the percentage to completion each court has reached to fully tracking each data point required by PA No. 19-59? Please give a clear "Yes" or "No" to the two subparts and any explanation.

Yes. Assuring that all interested parties are aware of our progress in CMS implementation is critical. If appointed, DCJ will send quarterly progress reports to the CJC in concert with our partners at OPM.

5. Will you commit to legislation reducing the length of state's attorney terms from eight years to four years? Please give a clear "Yes" or "No" to the question and any explanation.

No. I believe that eight-year terms are appropriate for State's Attorneys. I believe that terms were set at that length to equate them to the terms of Superior Court Judges. The Connecticut Constitution states the DCJ is an *independent* agency administered under the Executive Branch. See Article 23 of the Connecticut Constitution. This independence was afforded to DCJ,

unlike other executive branch agencies, in order to foster the independence necessary to make critical criminal justice decisions free from political pressure. The theory of judicial independence is similarly reflected in the 8-year term provided to Judges of the Superior Court, also constitutional officers, who engage in similar decision-making duties. There are significant procedures in place within the CJC, up to and including removal from office, that regulate and monitor State's Attorney conduct. As CSA, I will strive to assure quality performance throughout an SA's term as I indicated in #2 infra.

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A reduction of term years will also reduce the quantity and quality of applicants for vacant State's Attorney positions. As you are aware, these positions are critically important and must be filled by the most experienced, most qualified prosecutors. Most State's Attorneys retire during, not at the end of, their term. They are selected from the ranks of our Assistant State's Attorneys. A promotion to State's Attorney requires they leave a secure union position and a guaranteed union salary. Currently, State's Attorney compensation is at best equal to the salaries of some senior Supervisory Assistant State's Attorneys. I foresee fewer qualified prosecutors willing to leave secure positions for no increase in pay and a guaranteed term of less than four years. This will lead to less senior, less qualified applicants taking the ranks of our senior leadership. We must assure that the most qualified personnel apply for these critical positions. This should take priority given the other effective tools at the disposal of the CJC and the CSA to maintain quality performance.

6. Will you commit to ending mass incarceration by supporting legislation overhauling the sentence modification process to (a) consider only the rehabilitation and character of a person while incarcerated, and victim input, (b) eliminate the possibility of a sentence increase, and (c) eliminate the requirement of initial agreement by state's attorneys for a sentence modification application to be processed? Please give a clear "Yes" or "No" to all four subparts and any explanation.

No. I believe the sentence modification process is correctly viewed as an extraordinary measure to be implemented in limited circumstances. The Division of Criminal Justice is not the agency charged with determining who is or is not suitable for release from incarceration. The Department of Correction and the Board of Pardons and Parole must generally make these decisions. Sentence modification has traditionally been a tool prosecutors utilize to bring to the Court's attention the extraordinary efforts of certain incarcerated individuals who present unique circumstances. Incarcerated individuals who have come forward with information leading to the arrest or conviction of serial killers or other serious offenders do so at great personal risk. I have also entertained motions on behalf of individuals who have saved a corrections officer or another incarcerated individual's life. Individuals who

have made extraordinary efforts at rehabilitation and character have also merited agreement.

When the law was changed to require State's Attorney approval for a hearing, it was done so with the understanding that these motions were rarely approved over the objection of the State's Attorney. Providing a State's Attorney sign off was viewed as an appropriate check given the practicalities of the process. This should remain a limited tool. I have previously testified in the Judiciary Committee that I support providing the D.O.C. and the Board of Pardons and Parole with additional resources and procedures to make these decisions using proven dangerousness and recidivism metrics.

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7. Will you commit to ending mass incarceration by supporting legislation to modernize Connecticut's criminal code by (a) eliminating duplicative criminal penalties, (b) eliminating mandatory minimums and sentence enhancements, (c) reducing the maximum penalty of incarceration on all offenses by 25%, and (d) capping all prison sentences to 20 years? Please give a clear "Yes" or "No" to all four subparts and any explanation.

No. Each of these subparts is rather vague. There are more concrete policy changes that have merit, but I do not want to commit to a general statement without seeing specific details. I will however, commit to working in good faith with legislators, the various commissions and community advocates on these issues.

I support and participate in the Connecticut Sentencing Commission, which is charged with reviewing these types of issues and making recommendations to the legislature for changes. Some mandatory minimum sentences, particularly for drug offenses are not a deterrent or statistically proven to reduce the incidence of drug crimes. I would support the Connecticut Sentencing Commission if it chose to review those statutes. I would not support a blanket reduction in penalties or a cap of 20 years on a prison sentence. Harsh prison sentences should be the exception, not the rule. The checks and balances inherent in our system between the three branches of government must be maintained in order to assure victims of these heinous crimes that they and society will be sufficiently protected until a person is suitable for release.

If viewed over time, the Sentencing Commission has worked well by providing a forum for criminal justice professionals with day-to-day experience in the system to discuss and formulate legislative corrections for these complicated issues. Creating consensus through the Commission has reduced politically charged rhetoric surrounding corrective action in criminal justice. Statistics show that the reforms enacted through the sentencing commission have contributed to the historic reductions in crime experienced in Connecticut over the last decade.

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8. Will you commit to fairness and accountability by supporting legislation creating an independent conviction integrity unit to review and investigate innocence claims presented by people convicted of violent offenses? Please give a clear "Yes" or "No" to the question and any explanation.

Yes. The State's Attorneys, CSA Kevin Kane, ret'd,and myself have drafted a proposed policy to provide an avenue for incarcerated individuals who claim factual innocence to have their cases reviewed by DCJ. In order for the public to maintain confidence in our system of justice, we must assure that in the appropriate case, we can effectively review past convictions. Over six months ago, I presented and outline to CSA Kane, ret'd. creating a Conviction Integrity Unit (CIU) within the OCSA. An effective CIU will require an experienced staff of prosecutors and Inspectors similar to those currently assigned to our Cold Case Bureau. This is another area where, if selected as CSA, I will request funding from the Legislature to assure that this effort be done properly. Convicting an innocent person is every prosecutor's worst nightmare. If selected, we will have a CIU and I will effectively lobby the legislature to make the case that this is a critical priority of the DCJ.

9. Will you commit to saving taxpayer dollars by supporting the permanent closure of Connecticut's supermax prison, Northern Correctional Institution? Please give a clear "Yes" or "No" to the question and any explanation.

No. The professionals within the D.O.C. and other policy makers are responsible for these decisions. Every incarcerated person is entitled to the protections against cruel and unusual punishment provided for in our Constitution. The D.O.C. must comply with all State, Federal and Constitutional mandates in this area. They must also maintain a safe environment for their employees and all incarcerated individuals. I would support the legislature and the executive branch in their efforts to assure that all legal requirements are followed in the safe and legal detention of incarcerated individuals.

10. Will you commit to saving taxpayer dollars by supporting the permanent closure of Manson Youth Institution? Please give a clear "Yes" or "No" to the question and any explanation.

No. For the same reasons stated above. Particularly with the young offender population, our state government has struggled to maintain the proper balance between public safety and the well-being of young offenders. The closure of CJTS without sufficient in the community placement resources has, in effect, led to another sub-optimal situation for juvenile offenders.

As I observed personally at the Cheshire Correctional Institution, TRUE Unit, the DOC continues to innovate in an attempt to serve this population. The DCJ will continue to work collaboratively with DOC in areas of common

concern. All criminal justice agencies must work together to create a system that correctly serves the young adult population and promotes public safety. I pledge to work together with our other partners to bring that about.

11. Will you commit to transforming the role of the Division of Criminal Justice in ending mass incarceration by dedicating 50% of the division's budget, by 2025, to community wellness programs that divert people out of the criminal legal system, such as rehabilitation programs or nonjudicial sanctions? Please give a clear "Yes" or "No" to the question and any explanation.

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No. This is best accomplished by other state agencies and community non-profits. Ninety percent of DCJ's budget is devoted to salaried employees. The Division relies on the Judicial Branch and outside agencies to provide the kind of programming referred to in this question. I would note that current caseload statistics provided by the Judicial Branch indicate that we currently obtain convictions in less than 50% of criminal cases. The rest are already subject to being nolled by the prosecutor or given a diversionary program by the court. If appointed CSA, I would devote more resources to our ESI initiative and attempt to relay to our non-ESI locations the lessons learned on diversion. We will increase our efforts at using non-judicial local sanctions that have proven effective and eliminate those that have proven unsuccessful. Our new CMS system will assist us in making data driven decisions in this area.

12. Will you commit to holding police accountable by supporting legislation to change Connecticut's use of force standard to one in which killings by police are justified only if it is clear that police did not, through their actions, create a situation in which deadly force was necessary? Please give a clear "Yes" or "No" to the question and any explanation.

No. I believe our current use of force statute is appropriate. It reflects the split second decision making of officers who, unlike regular citizens, are required to act and place themselves in mortal danger. The United States Supreme Court explained that the "reasonableness of a particular use of force must be judged from the perspective of a reasonable officer on scene rather than with 20/20 hindsight... The calculous of reasonableness must embody allowance of the fact that police officers are often forced to make split second decisions in circumstances that are tense, uncertain and rapidly evolving about the amount of force that is necessary in a particular situation" Graham v. Connor, 490 U.S. 386 at 396-397 (1989).

However, the law must hold police accountable. Throughout my career, I have never shied away from holding on-duty law enforcement accountable. As Ansonia-Milford State's Attorney, I personally prosecuted, brought to trial and convicted (on lesser-included charges), an officer accused of two counts of manslaughter. I prosecuted and convicted a U.S. Marshal for Assault in the

First Degree. My office investigated and referred for prosecution a senior Milford prosecutor for on-duty Larceny in the First Degree. I further advocated for his incarceration at his sentencing.

If appointed, I can assure the public that when legally justified; law enforcement will be held accountable for their actions in violation of the law.

13. Will you commit to holding police accountable by supporting legislation requiring state's attorneys to (a) update the Criminal Justice Commission quarterly on all open deadly force investigations, and (b) present their findings to the Criminal Justice Commission with an opportunity for public comment? Please give a clear "Yes" or "No" to both question subparts and any explanation.

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No. I support DCJ's current efforts at reform in this area. DCJ is now placing every open use of force investigation on its public website. The website also includes references to all publically available information on each case. The State's Attorney's and the OCSA Administration are drafting a procedure for reporting updates to the CSA on each investigation at certain time intervals. This will include a tracking system to insure that these reports are completed in a timely manner. Since these investigations are the CSA's ultimate responsibility and are criminal in nature, the reports should be made to the CSA rather than in public to the CJC.

14. Will you commit to holding police accountable by (a) creating a statewide "Brady List" of police officers excluded from testifying in criminal cases because of a proven history of lying or other professional or criminal misconduct, and (b) making the "Brady List" available to the public on request? Please give a clear "Yes" or "No" to the question and any explanation.

No. Brady material on a particular officer is not an automatic disqualifier from testimony. Brady material can range from something minor and not relevant to an officer's testimonial integrity to much more serious conduct. A dispute regarding the amount of overtime claimed on a time sheet by an officer, where an arbiter finds in favor of management, might be construed as Brady material. On the other hand, falsifying information submitted, under oath, in a warrant application will be viewed differently.

Brady requires that should a police officer be a potential witness, the material be disclosed to the defense. Each prosecutor is ethically responsible for inquiring and disclosing this information. Statewide lists of officers with such issues would be within the jurisdiction of the Police Officer Standards and Training Council. If appointed as CSA, I would advocate for discussion of the issue as a member of that body. I will note that as a State's Attorney, on several occasions, I did in fact bar officers who had provided dishonest work product from applying for search warrants or testifying in court. This

did lead to officers being disciplined and removed from local police departments. Pursuant to current law, local chiefs are further required to notify POST of these findings. POST currently has the authority to decertify these officers due to serious "Brady violation" misconduct. See CGS § CT 7-294d(c)(2) POST currently maintains a public list of these decertified police officers. See CGS § 7-294d(23)(2) and https://portal.ct.gov/-/media/POST/CERTIFICATION/DecertifiedOfficers_Jun_2019.pdf

15. Will you commit to holding police accountable by (a) assigning prosecutors in every judicial district to ensure that every charge is supported by probable cause before filing with the court, as required by Practice Book § 36-12, (b) ensuring cases are dismissed when insufficient evidence exists to support prosecution, and (c) refusing to prosecute cases involving police officers who have a proven record of false testimony, evidence tampering, or have otherwise proven unreliable in meeting ethical or professional standards? Please give a clear "Yes" or "No" to the question and any explanation.

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Yes, but this cannot be accomplished by the CSA or DCJ alone. These changes will require input from the Judicial Branch, an independent and separate branch of government. Unlike other states, our current court procedures require arrest and probable cause paperwork to be sent directly from police to the Court Clerk. Prosecutors currently review cases for legal sufficiency on a daily basis but only after the Clerk assigns a docket number. A change in this procedure will require substantial resources and cooperation between the executive and judicial branches. The ESI program is beginning to address this issue. This should be a long-term goal of our overall criminal justice system. See also, answer 14 infra.

16. Will you commit to transparency and accountability by supporting legislation setting a uniform standard for criminal discovery which mandates (a) disclosure of all evidence to a defendant before they are required to accept or reject a plea offer, (b) disclosure of all evidence to the defense no later than 30 days before trial, (c) filing with the court an itemized list of information disclosed to the defense, and (d) mandating dismissal upon the defense's request if the prosecution fails to provide required evidence within prescribed time period? Please give a clear "Yes" or "No" to the question and any explanation.

Yes, I am in favor of more uniform procedures for criminal discovery. In the previous legislative session, I worked with the legislature and the Office of the Chief Public Defender to craft a workable procedure. This complicated issue must be addressed by working together with the Judicial Branch, which is primarily responsible for providing fair and equal treatment in our courts. That is why we are working together with Judicial Branch, other state agencies and other interested parties as the Judicial Branch attempts to craft Rules of Court to address the topic.

This should not prevent the next CSA from working together with the SA's to create our own rules, which provide more information sooner in the process in a similar way in each JD. As CSA, I will work together with the SA's to craft policies which reflect that goal as well as conduct statewide training in this area to standardize our responses in individual courts.

17. Will you commit to transparency and accountability by supporting legislation codifying a Division of Criminal Justice code of ethics that meets or exceeds the American Bar Association's Criminal Justice Standards for the Prosecution Function? Please give a clear "Yes" or "No" to the question and any explanation.

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No. This aspirational document provides guidance to prosecutors. DCJ prosecutors are already subject to greater ethical obligations than all other Connecticut attorneys are via state statutes, the Connecticut Practice Book, the Grievance process, the DCJ Code of Ethics and DCJ's internal disciplinary procedures. I fully support holding all prosecutors to the highest ethical standards. I will continue our work in this area by refining the DCJ Code of Ethics as necessary based on specific areas of concern.

Please write your answers in this document and email your responses to Claudine Fox at cfox@acluct.org on or before December 31, 2019.

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[i] To learn more about the ACLU's Smart Justice Campaign visit: https://www.acluct.org/en/issues/smart-justice

[ii] A link to Public Act No. 19-59 can be found here: https://www.cga.ct.gov/2019/ACT/pa/pdf/2019PA-00059-R00SB-00880-PA.pdf