



(IN)JUSTICE *in* **LA**

An Analysis of the Los Angeles County District Attorney's Office
& Recommendations for Justice Reform



Northern California



Southern California

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Executive Summary

This report utilizes data and documents provided to the ACLU of Northern California in response to a Public Records Act request sent to the Los Angeles District Attorney's (L.A. DA) office in May of 2019 (see Appendix 1 for the full request). It is also informed by interviews with public defenders, criminal-legal system activists,¹ and experts who are criminal-legal system-impacted.

The November 3, 2020, general election resulted in the election of George Gascón, who unseated two-term incumbent Jackie Lacey. This report makes recommendations for ways the L.A. DA's office can safely decrease the number of people who come in contact with the criminal-legal system, the number of people incarcerated in L.A.County, and the harms done by contact with the criminal-legal system. While Gascón ran on a platform that included some of the recommendations made here, it remains to be seen how and if he successfully implements them, and how much further he goes toward improving the office's policies.

The prosecution data provided by the L.A. DA contains information related to charges prosecuted by the DA's office in 2017 and 2018. While it contained information regarding individuals' age and a binary sex variable, **the data provided no other demographic information. Particularly concerning is the lack of race data.** The DA's office cannot expect to address racial disparities in its work without race data.

CHARGING DECISIONS

Data provided by the L.A. DA's office reveals that of the 510,996 charges the L.A. DA's office prosecuted in 2017 and 2018, almost 60% were misdemeanors, 60.5% were charges that are minor enough that the ACLU recommends DAs always either divert prior to filing or decline to charge entirely,² and only 9.6% were serious or violent felonies.

- **The Los Angeles District Attorney's office should develop a "Decline to Charge / Pre-Plea Diversion" list** of charges that are automatically dropped or diverted that includes: charges related to driving with a suspended or revoked license, crimes associated with being a victim of sex trafficking, low-level drug charges, trespassing charges, and charges against individuals with mental health disorders while they are in custody.
- The office should eliminate the use of sentence enhancements, and analyze the racial impact of its charging decisions, releasing the data and results publicly, as well as their plan to eliminate racial disparities in charging.

PROSECUTING LAW ENFORCEMENT

Despite being 8% of L.A.County's population, Black individuals make up 20% of the people killed by law enforcement in L.A.County. Since 2012, the L.A. DA's office has only reviewed 252 fatal officer-involved shootings, and declined to prosecute all but one, even when the Chief of Police recommended criminal

charges. In order to better hold law enforcement accountable for their actions, and to protect those they disproportionately inflict violence upon:

- The Los Angeles District Attorney's office should support the creation of an entity entirely separate from the DA's office for the purpose of prosecuting cases against law enforcement officials, and transfer the necessary ongoing funding from the DA office's budget to this new entity. This will help remove the conflict of having to prosecute the same people who they rely upon to build their cases against the general public.
- The L.A. DA should advocate for the current Bureau of Victim Services, which is housed within the L.A. DA's office, to be closed and a new entity, separate from the DA's office, to be established. The funding currently provided to the office for the Bureau of Victim Services should be transferred to this new entity on an ongoing basis.

DIVERSION & PAROLE

The data provided by the L.A. DA's office showed that less than 1% of people prosecuted by the L.A. DA's office in 2017-18 had any of their charges diverted. Given that approximately 18.3% (over 3,000 people on any given day) of the entire L.A. County Jail population at any given time is suitable and eligible for Mental Health Diversion (let alone other types of diversion), yet remains incarcerated, **the L.A. DA's office needs to automatically decline and divert many low-level charges.** Although the office reported that they attended 2,983 parole

hearings in 2017-18, they were unable to provide data on whether they supported or opposed parole in those hearings. The L.A. DA's office should track diversion and parole data and make it publicly available to ensure accountability. The L.A. DA's office should also eliminate money-based barriers to diversion, move diversion to community-based programs, and incentivize diversion over prosecution. All diversion programs should be offered pre-plea and not require an admission of guilt.

IMMIGRATION

Certain criminal convictions at the county level can result in non-citizens being placed in removal proceedings and deported by the federal Immigration and Customs Enforcement (ICE) agency. Despite a legal obligation that prosecutors must consider these adverse consequences in plea negotiation, the L.A. DA's office currently has no guidelines or training on how to do so. Accordingly, public defenders report widely varying adherence to this law. **The L.A. DA's office should immediately write a policy and develop training for line prosecutors requiring them to always use immigration-neutral pleas that are consistent with the facts of the case.** The L.A. DA's office should also streamline access to post-conviction relief to help mitigate the adverse immigration consequences of convictions.

COVID-19 RESPONSE

The Los Angeles DA's office should plan to continue several policies implemented in response to the COVID-19 pandemic and ensure they are adhered to by staff, even once health and safety concerns around the pandemic subside. Specifically, DA Jackie Lacey directed her deputies to "allow nonviolent offenders who do not pose a danger to the community to remain outside

the criminal justice system," and, "not request that defendants be remanded on probation or parole violations on nonviolent and non-serious crimes" unless they pose a danger to the community. She also directed Head Deputy District Attorneys to expand the use of the Pre-filing Diversion Program. All of these policies promote the wellbeing of the community and should be continued.

Introduction

The Role of District Attorneys

District Attorneys (DAs) wield significant power to influence the criminal-legal system. They decide, among other things, whether to bring charges, what charges to bring, which police to call as witnesses, whom to bring a death penalty case against, whose parole to oppose, and how restrictive to make someone's probation terms. District Attorneys also heavily influence whether an individual is routed into treatment or diversion programs and whether someone is detained pretrial. The primary role of district attorneys, according to the California District Attorneys Association, is to protect the community he or she is elected to serve.³

When police arrest someone, they collect evidence of any crimes that may have occurred. They then assemble that evidence, and turn it over to the DA's office. The DA's office must review these police reports and decide whether to bring criminal charges against the individual, divert them to a program that may provide services that can help prevent recidivism, or drop the case entirely. They are obligated by the American Bar Association's Criminal Justice Standards for the Prosecution Function to only file charges that they believe they can prove beyond a reasonable doubt.⁴

Of all the actors in the criminal-legal system, the DA has the greatest power over the outcomes people face. Ninety-four percent of cases at the state level⁵ are resolved through plea bargains, where DAs exert significant control. Even in cases that do go to trial, where judges ultimately decide on the punishment, the DA decides what charges to bring and makes recommendations for punishment. District attorneys also have the power to steer individuals accused of a crime away from the criminal-legal system and into diversion programs, where they can be provided with voluntarily-received, community-based social services. Often, being accused of a crime is a result of lack of resources; district attorneys have the power to divert people to the resources necessary to get people out of situations that make them more likely to be charged with a crime.

In California, District Attorneys are elected in each county. They serve four-year terms and they have no term limits.



The Rise of “Progressive” Prosecutors

District attorneys and other prosecutors have historically been elected and held onto their offices by positioning themselves as being “tough on crime,”⁶ but recent years have seen a number of high-profile prosecutors win races by campaigning on platforms of criminal-legal reform.⁷ The main subjects of reform have included promises to end the cash bail system, addressing systemic racism, holding police officers accountable for misconduct and deadly use of force, and ending mass incarceration.

Kim Foxx ran for State’s Attorney in Cook County (where Chicago, IL is located) on a platform of decarceration. After winning with 72% of the vote in 2016⁸, she raised the bar for felony retail theft charges more than threefold, to \$1,000 or greater. This decreased the number of cases with felony retail theft charges almost 74% in the Foxx administration’s first two years. She also increased the use of diversion, and encouraged her deputies to decline to prosecute charges for which her office determined prosecution is not the best way to promote community health and safety. Despite fears that decreased prosecution would result in higher rates of crime, the county has experienced a decrease in violent crime of 8%⁹ and the homicide rates decreased every year she has been in office.¹⁰

In Philadelphia, Larry Krasner won his 2017 election with a campaign platform that included changing the DA’s office “from a culture of seeking victory for prosecutors to a culture of seeking justice for victims,” and promises to never pursue the death penalty, end mass incarceration, reject illegal use of stop-and-frisk, stop cash bail, and stop the abuse of civil asset forfeiture.¹¹ Speaking on the topic of personnel, he stated, “It’s crucial to have a critical mass of people who share your vision,” and in his first week in office, he fired 30 of his prosecutors, representing 10% of the lawyers on his staff.¹² He has instructed his attorneys to

state the projected cost to taxpayers of any prison sentence they ask for in court, offer plea deals below the bottom range of Pennsylvania sentencing guidelines for nonviolent charges, halt prosecution of marijuana cases where there was no intent to sell, decline to charge sex workers before a third prosecution conviction, and handle any small retail theft with a citation. The city’s jail population has decreased 33% during his tenure, without an increase in crime.¹³

Rachael Rollins, who won the Suffolk County, MA (which includes Boston) district attorney election in 2018, revealed that she planned to ask prosecutors in her office “Why did you apply for a job where you would be putting people of color in jail every single day?” Although her results have been mixed since taking office, she won the election on promises to end cash bail and pretrial detention, as well as to decline to prosecute petty, poverty-related crimes.¹⁴

Chesa Boudin, who took the office of San Francisco District Attorney on January 8, 2020, almost immediately announced several major changes to the way the office operates. Six days into his term, he directed his office to provide a diversion program aimed at keeping children united with their parents and ending a generational cycle of incarceration.¹⁵ On his 14th day in office, he ended the practice of prosecutors asking for cash bail as a condition of pretrial detention, replacing money bail with a risk-based system.¹⁶ And within two months, he announced that his office would no longer charge people with possession of contraband found during stop-and-frisk style “pretextual” searches or make use of status-based sentencing enhancements, including “Three Strikes” enhancements and gang enhancements, except in extraordinary circumstances.¹⁷

George Gascón and the 2020 General Election

In the November 3, 2020 General Election, George Gascón defeated two-term incumbent Jackie Lacey to become District Attorney of Los Angeles County. Gascón’s campaign website quotes him as saying “Los Angeles deserves a new District Attorney who will make our neighborhoods safer, hold police accountable to the communities they serve, and reform our justice system so it works for everyone. I have reduced violent crime in every leadership position I’ve held while pioneering reforms to reduce racial disparities and end mass incarceration.”¹⁸ His platform included eliminating money bail and the death penalty, resentencing those convicted to death to life without parole, expansion of diversion programs, and detailed plans regarding law enforcement accountability, immigration-informed prosecution, and data transparency.¹⁹

His endorsements frequently cited his progressive past and penchant for reform. Los Angeles Mayor Eric Garcetti’s endorsement said, “George Gascón will help our county shift the burden from the criminal justice system and jails toward diversion, intervention and re-entry programs that save money and save lives.”²⁰ Gavin Newsom, Governor of California, stated “he burnished a national reputation as a leader in the fight to reform our dated system of justice.” And Elizabeth Warren said Gascón “has been a national leader in criminal justice reform and a powerful advocate for rethinking our approach to public safety and ending mass incarceration.”²¹ These high-profile endorsements promise a lot of Gascón, so L.A. County, and the entire nation, have their eyes on him to see what he is able to accomplish as he takes office.

George Gascón has the opportunity to re-shape the Los Angeles District Attorney’s Office into his vision, and this report includes a roadmap of changes vital to improving the outcomes at the L.A. DA’s office. While his campaign platform includes many of the recommendations made here, it remains to be seen whether he actually implements those changes.



Methodology

On May 13, 2019 the ACLU of Northern California sent a California Public Records Act request to the 15 largest district attorney's offices in the state of California, including the Los Angeles District Attorney's Office. The PRA requested:

- Prosecution data for 2017 and 2018;
- Data on diversion programs and policies relating to those programs;
- Information on positions the office took in parole hearings;
- Office policies, protocols, and guidelines for prosecutors;
- Immigration-related policies; and
- Policies related to the implementation of SB 1421.²²

The entire request letter sent and a list of responsive documents can be found in Appendices 1 and 2. The responsive documents themselves are available at meetyourda.org/public-act-request-pra/lapra/5519, and the reproducible code is available at github.com/ACLU-CA/LADA_report_2020.

The prosecution data provided by the Los Angeles District Attorney's office in response to the PRA includes all charges filed by the office in calendar years 2017 and 2018. The data includes:

- masked case numbers,
- identifiers for accused individual within a case (but not between cases),
- case level (misdemeanor or felony),
- sex of the accused individual,
- age of the accused individual at the time of the alleged offense,
- charge level (misdemeanor, felony, or infraction),
- each charge's statute code and section,
- plea if there was one,
- the charge "result" (i.e. dismissed, convicted, diversion, etc.),
- result date,
- charge city (99.8% of which was missing), and
- zip code (40.6% of which was missing)

Because no unique person identifiers were included in the dataset provided in response to the Public Records Act request sent by the ACLU of Northern California, all calculations of individuals derived from this dataset and reported here represent a maximum number of people, assuming that all individuals in the dataset are unique (i.e. no one recidivates).

Given that the most recent recidivism rate published by the California Department of Corrections and Rehabilitation in 2020 was 46.5% for fiscal year 2014-15,²³ (rates for Los Angeles are likely similar²⁴), the true number of individuals is almost surely somewhat lower, but given that recidivism rates vary widely based on charges, sentencing, diversion, demographic and other factors, it seems less responsible to try to estimate a number of unique individuals based on recidivism rates than it is to report the number that the data provided by the district attorney's office allows to be calculated. Because a great amount of the geographic data was missing, this report contains no spatial analyses, as any results may be inaccurate and misleading if there is systematic non-reporting of zip code data.

Furthermore, no race data was provided, preventing any racial analysis. This lack of race data is troubling because it indicates either that the Los Angeles District Attorney's office lacks the ability to examine their office's role in perpetuating systemic racism in the criminal legal system or, or that they intentionally excluded race data when responding to the PRA request.

In addition to the quantitative analysis of this dataset, interviews were conducted with individuals who have personal and professional experience of the impact the Los Angeles District Attorney's office can have on people's lives:



YEHUDAH PRYCE was arrested at the age of 19 and sentenced to 24-years in prison for a non-violent robbery.

He was released early on parole in October of 2018, and has since earned a BA in Sociology and is in his last semester of his MSW at the University of Southern California. Pryce is currently a psychotherapist intern at Beit T'Shuvah, providing therapy to formerly incarcerated individuals. He supervises Turning Point's Returning Citizens Stimulus program, work that includes surveying citizens who were recently released from incarceration as to their experience with the Los Angeles district attorney's office and their access to mental health and other social services. Pryce is an Intensive Case Management Services program manager providing services for community members in South Los Angeles who are chronically unhoused and experience high-acuity mental health challenges, and is the Chair of the University of Southern California's Unchained Scholars, a group for social work students who were formerly incarcerated, system-impacted, justice-impacted or allies to both.

IVETTE ALÉ is the Senior Policy lead with Dignity and Power Now and the lead organizer with the JusticeLACoalition. They are a Women's Policy Institute Fellow, Justice Policy Network Fellow, and a UCLA Law Fellow. Ivette's experience growing up in Southern California as an undocumented person and as the child of an incarcerated person have informed their perspectives throughout a 15-year advocacy career.

NIKHIL RAMNANEY has been a public defender in L.A. County since 2011, and is the president of AFSCME Local 148, the L.A. County Public Defenders Union.

MEREDITH GALLEN, a board member of AFSCME Local 148 (L.A. County Public Defenders Union), has been a public defender in Los Angeles for three and a half years, primarily in misdemeanor courts.



DOUGLAS JESSOP was wrongfully convicted through what he describes as “a prejudiced and corrupt plea bargain established through an erroneous profile.”

As a result, he was unlawfully incarcerated for three years. In prison, Jessop became a prison law clerk, filing cases in California Supreme Court that went en banc, winning prison appeals in cases against corrupt guards, and helping other inmates gain their freedom. He has committed his life to social justice and is currently a Social Justice Advocate in the Los Angeles DA Accountability Coalition, Policy Advocate with the Anti-Recidivism Coalition, Social Justice Advocate with the Youth Justice Coalition, and a member of the Creative Futures Collective.

THOMAS GONZALEZ (a pseudonym to protect his clients) has been a public defender in Los Angeles County since 2013, and has worked in adult misdemeanors, juvenile delinquency, and adult felonies.

ELISABETH SMITH (a pseudonym to protect her clients) is an attorney who has worked in many county courts and has represented both juveniles and adults charged with both misdemeanors and felonies.

ALEX SHERMAN, an attorney and journalist in Los Angeles and a member of the Los Angeles DA Accountability Coalition (his opinions do not necessarily reflect the Coalition’s positions), was also interviewed, as well as another Coalition member, who asked not to be identified due to the nature of her professional work.



MICHAEL SAAVEDRA is the Legal Coordinator & Youth Mentor at the L.A. Youth Justice Coalition, and a Community Organizer with Dignity and Power Now.

He is a Pathway to Law School graduate of Riverside City College and a UCLA student and Underground Scholar. Michael was incarcerated for over 19 years, during which time he helped organize, lead, and participate in hunger strikes against solitary confinement, where he was held for 15 years. While incarcerated, he successfully sued the California Department of Corrections and Rehabilitation three times for denying him due process related to solitary confinement and for inhumane conditions. His experience as a formerly incarcerated individual and his work since release have shaped his perspectives, and provided him with an understanding of the experiences of countless individuals affected by the District Attorney’s office.

Charging Decisions

Descriptive Analysis of 2017-18 Prosecution Data

In response to the ACLU's Public Records Act request for prosecution data from 2017 and 2018, the Los Angeles District Attorney's office provided a dataset that includes every charge prosecuted by their office for those two entire calendar years. The data includes:

- masked case numbers,
- identifiers for individuals within a case (but not between cases),
- case level (misdemeanor or felony), sex of the accused individual,
- age of the accused individual at the time of the alleged offense,
- charge level (misdemeanor, felony, or infraction),
- each charge's statute code and section,
- plea if there was one,
- the charge "result" (i.e. dismissed, convicted, diversion, etc.),
- result date,
- charge city (99.8% of which was missing), and
- zip code (40.6% of which was missing).

Because the data did not contain an identifier for individuals across cases, it is impossible to determine how often individuals are charged in multiple cases. **Furthermore, no race data or information about where arrests occurred was provided.**



OVERALL TRENDS

According to the data provided by the L.A. DA's office for the years 2017 and 2018, 59.1% of the charges brought by the office were misdemeanor charges, while only 33% were felonies, of which a mere 9.1% are classified as serious or violent felonies as defined by California Penal Code sections 1192.7(c), 1192.8, and 667.5 (see figure 1).²⁵ This is easily interpreted in multiple ways. Prosecuting more misdemeanor charges could be viewed as being more lenient on individuals, and not forcing them to face more serious felony charges. On the other hand, it could indicate that the majority of the DA's work is prosecuting misdemeanors that could better be dealt with outside the criminal system.

Figure 1: Frequency of Charge Types

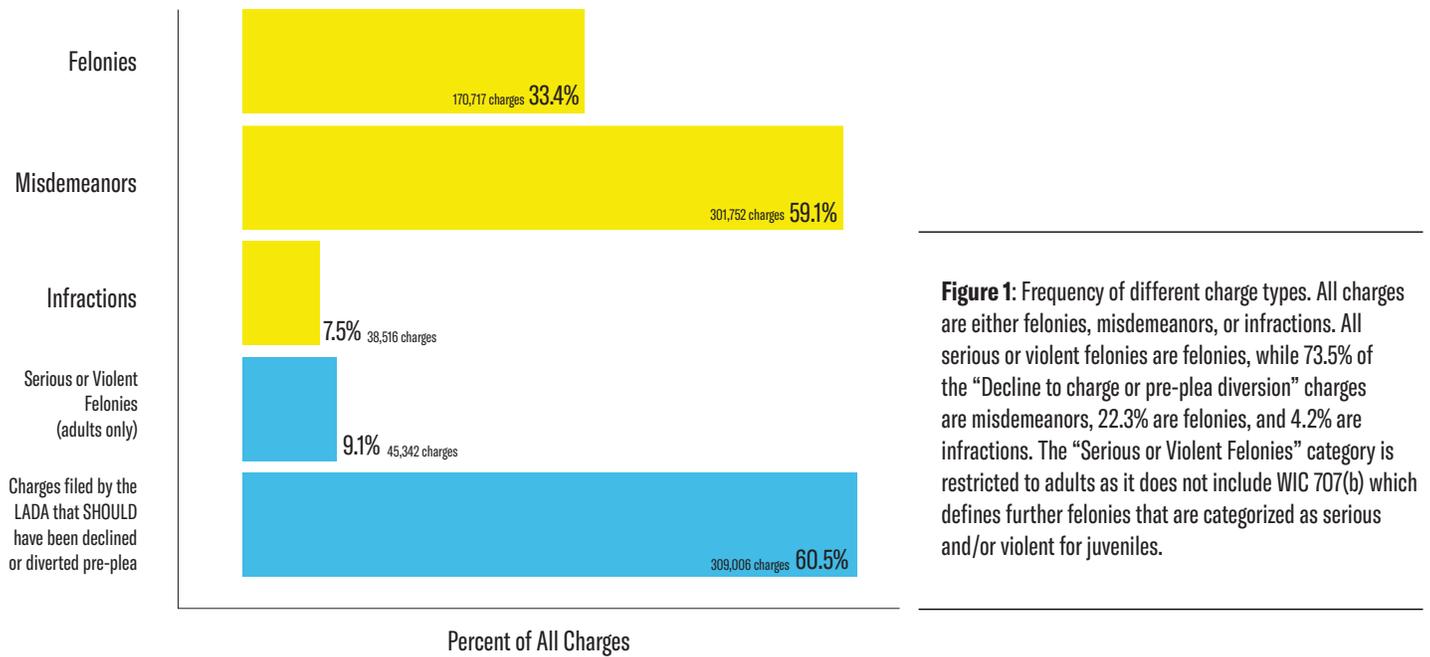


Figure 1: Frequency of different charge types. All charges are either felonies, misdemeanors, or infractions. All serious or violent felonies are felonies, while 73.5% of the “Decline to charge or pre-plea diversion” charges are misdemeanors, 22.3% are felonies, and 4.2% are infractions. The “Serious or Violent Felonies” category is restricted to adults as it does not include WIC 707(b) which defines further felonies that are categorized as serious and/or violent for juveniles.

The DA is the most powerful actor in the local criminal-legal system. While most DAs claim they are fighting serious and violent offenses, only 9.1% of all charges filed by the L.A. DA’s office from 2017-2018 were classified as serious or violent felonies as defined by California law.

Furthermore, 60.5% of the charges were ones which the ACLU believes DAs should automatically decline to charge or offer pre-plea diversion for,²⁶ such as possession of drug paraphernalia, driving with a suspended license, or possession of a controlled substance (see Figure 2).

Figure 2: Most Common Charges from ACLU’s Decline to Charge/Pre-plea Diversion List

Charge Code	Charge Level	Charge Description	# Charges	% Charges
HS 11364	Misdemeanor	Possession of drug paraphernalia	25,579	5.01%
VC 14601.1(a)	Misdemeanor	Driving with suspended/revoked license	24,714	4.84%
HS 11377	Misdemeanor	Possession of controlled substance	23,460	4.59%
VC 23152(a)	Misdemeanor	DUI - under influence of alcohol	17,950	3.51%
VC 12500(a)	Misdemeanor	Driving without a license	16,329	3.20%
VC 23152(b)	Misdemeanor	DUI - BAC > 0.08%	15,927	3.12%
PC 459	Felony	Burglary	12,678	2.48%
VC 12500(a)	Infraction	Driving without a license (infraction)	10,849	2.12%
PC 211	Felony	Robbery	10,271	2.01%
PC 484(a) & PC 490.2	Misdemeanor	Petty Theft	10,262	2.01%

Figure 2: The ten charges most frequently prosecuted by the L.A. DA’s office on the ACLU’s “Decline to Charge / Pre-plea Diversion” list.

DISMISSALS

The Los Angeles District Attorney’s Legal Policy Manual Chapter 2.01.01 provides standard guidelines for filing charges:

A deputy may file criminal charges only if the following four requirements are satisfied:

- *There is legally sufficient, admissible evidence of all of the elements of the crime(s) to be charged;*
- *There is legally sufficient, admissible evidence of the accused’s identity as the perpetrator of the crime(s) to be charged;*
- *The deputy, based on a complete investigation and a thorough consideration of all pertinent facts readily available, is satisfied the evidence proves the accused is guilty of the crime(s) to be charged; and*
- *The deputy has determined that the admissible evidence is of such convincing force that it would warrant conviction of the crime(s) charged by a reasonable and objective fact finder hearing all the evidence available to the deputy at the time of charging and after considering the most plausible, reasonably foreseeable defense(s) inherent in the prosecution’s evidence.*

One might reasonably expect that with such requirements for filing charges, the DA’s office would have a very high conviction rate, as prosecutors should only file charges that are highly likely to be true, accurate, and result in a conviction. In reality, however, 51% of all charges brought by the L.A. DA’s office in 2017-18 were dismissed. 49% of felonies, 51% of misdemeanors, and 64% of infractions were dismissed (see Figure 3 for most frequently dismissed charges). The district attorney’s office often brings multiple charges against an individual in a single case. Charges, whether it be one, two or all the charges in a case, can be dismissed at the request of the prosecutor, as a result of plea bargaining, or by the judge if the judge decides there is not sufficient evidence in the case.

Over 23% of people in **all** cases had all their charges dismissed, and a full 59% had more than half of their charges dismissed. This means that as many as 61,699 legally innocent people had their lives disrupted by being brought into criminal proceedings by the L.A. District Attorney’s office, only to have **all of their charges dropped**. 156,954 people in the data provided by the L.A. DA’s office had at least half of their charges dropped.

Figure 3: Most Frequently Dismissed Charges

Charge Code	Charge Level	Charge Description	# Charges	% Dismissed
VC 16028(a)	Infraction	Driving without insurance	6,438	98.9%
VC 4000(a)(1)	Infraction	Driving without proper registration	4237	95.1%
VC 23152(a)	Misdemeanor	DUI	15,809	88.1%
VC 23152(a) & VC 23540	Misdemeanor	DUI second offense	2,894	80.2%
PC 466	Misdemeanor	Possession of burglary tools	1,998	65.9%
PC 422(a)	Felony	Criminal threats	3,806	63.8%
HSC 11364	Misdemeanor	Possession of drug paraphernalia	16,227	63.4%
PC 647(f)	Misdemeanor	Drunk in public	3,103	61.2%
PC 30305(a)(1)	Felony	Illegal possession of firearm	1,814	60.3%
VC 14601.1(a)	Misdemeanor	Driving with suspended/revoked license	14,763	59.7%

Figure 3: Top 10 most frequently dismissed charges, out of the top 50 most-prosecuted charges. Analysis was limited to the top 50-most prosecuted charges so that charges that were only prosecuted a few times, but were dismissed every time, were not included.

LOW-LEVEL AND MISDEMEANOR CHARGES

A large body of evidence supports the proposal of moving many low-level charges from the criminal to the civil system, in order to reduce the severe impact that misdemeanors can have on people's lives.²⁷ The National Association of Criminal Defense Lawyers has argued that “[m]any misdemeanor crimes do not involve significant risks to public safety, yet they result in high numbers of arrests, prosecutions, and people in jail... The criminal justice system would operate far more efficiently if these crimes were downgraded to civil offenses.”²⁸

In 2017 and 2018, the L.A. DA's office pursued misdemeanor cases at a rate of over two times that of felony cases (Figure 4). The office prosecuted 173,740 misdemeanor cases, representing as many as 179,552 people. Although 68.7% of all cases being misdemeanor cases is a lower proportion than in the US as a whole (80%),²⁹ it is substantially higher than other places in California. For example, only 22% of the cases filed in San Francisco during the equivalent time period were misdemeanors.³⁰

The three most common misdemeanor charges prosecuted by the L.A. District Attorney's office are possession of drug paraphernalia (HSC 11364), driving with a suspended license (VC 14601.1(a)), and possession of a controlled substance (HSC 11377). These three charges represent almost 25% of all misdemeanors charged by the L.A. DA's office. None of these crimes cause harm to people other than the person charged with the crime, and many of them cause no harm to anyone at all. Often, they are crimes charged almost exclusive to the poor. Fifty-three percent of the time, one or more of these three charges are brought as the only charge against someone, so it cannot be argued that they are being brought as part of a more serious case. Another 27% of the time, only one other charge is brought against a defendant, so they are not part of a long list of charges an individual is facing. And people charged with these crimes, even if not convicted, can be detained pre-trial. To post bail, someone would need \$1,000 if charged with possession of a controlled substance (HSC 11377), \$300 for driving with a suspended license (VC 14601.1(a)), and \$250 for possession of drug paraphernalia (HSC 11364).³¹

Figure 4: Case-Level Severity

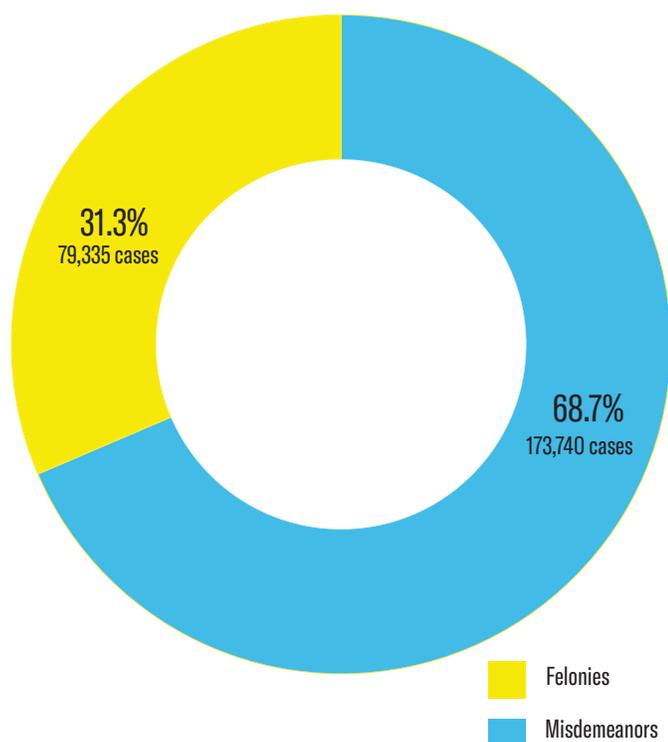


Figure 4: Case-level severity. Although figure 1 shows a similar graph with felonies and misdemeanors, that is for the **charge** level. This shows the percent of **cases** that are felonies vs misdemeanors. A single case may have multiple charges, which may have different severity levels (i.e. a felony-level case may have 2 felony **charges** and 3 misdemeanor **charges**).

Personal and Professional Perspectives

The public defenders interviewed for this report agreed that, in an ideal world, almost all misdemeanors would not be charged by the DA's office at all. They said that all misdemeanors can and should be dealt with in the civil system or traffic court. They shared a vision of a future where, without misdemeanor charges flooding the criminal-legal system, appropriate resources

and time could be put into more serious and complicated charges. As it stands now, both prosecutors and public defenders race against the clock in every case they work on, and expend significant staff time and resources on cases that shouldn't be in the criminal-legal system in the first place.

Specifically, the public defenders and attorneys interviewed for this report suggested:

- Charges related to driving with a suspended or revoked license should be dealt with as a traffic ticket, in traffic court, or not filed at all. The attorneys interviewed for this report said that the DA currently possesses the power to direct all of these charges to traffic court. Nevertheless, the data show that driving with a suspended license is the second-most prosecuted charge by the L.A. DA's office, and driving without a license is the fifth most common charge.

In the public defenders' experience, a large number of these charges are due to people not being able to pay traffic fines. In L.A. County, having a car is critical to being able to work, so many of these people who are already too poor to pay the fine then face a choice: obey the law and don't go to work (because their license is suspended), and potentially lose their jobs, or break the law and drive with a suspended license so they can survive.

- Crimes associated with being a victim of sex trafficking should not be prosecuted. Two public defenders said that they regularly defend victims of sex trafficking against prostitution charges. They suggested that rather than prosecute these people, the DA should decline to charge prostitution or solicitation (PC 647b) charges completely, and that the resources currently devoted to prosecuting sex workers should be diverted to qualified, community-based service providers.
- Most drug charges should be dealt with as the public health issue they are. Public defender Meredith Gallen said that, "through years of trying to prosecute our way out of drug problems we have seen no changes whatsoever." District Attorney Jackie Lacey made drug diversion a high-profile talking point during her tenure, but possession of drug paraphernalia and possession of a controlled substance were the first- and third-most prosecuted charges by her office respectively.³² The L.A. DA's office diverted less than 1% of all charges in the data they provided, so the office needs to actually utilize the diversion programs that exist.
- Trespassing charges are frequently brought against individuals experiencing homelessness. This criminalizes their existence, and punishes them for something they have very little ability to change. Furthermore, when unhoused people are incarcerated for trespassing, they often lose all of their worldly possessions to the street during the time they are behind bars. The combined trespassing-related charges are the 23rd most prosecuted charge by the District Attorney's office, with 5,262 charges prosecuted in 2017-18.



"They harass the hell out of people who are homeless. For real, people who are homeless get harassed. They charge them with disorderly conduct or trespassing: anything that they can on paper, make them look like a crazy criminal."

DOUGLAS JESSOP

“When somebody is homeless, doesn’t have any money, any resources, and they come out, they have to survive. You know, statistics show us that we have one of the highest recidivism rates in the nation despite having the most prisons and jails. So if folks come out with nothing, they tend to go back to hustling or doing what they have to do to survive. And that could often lead them back to jail.”

MICHAEL SAAVEDRA

- More compassion is required to help individuals with mental health disorders who face charges clearly related to their mental health while they are in custody. Public Defenders Nikhil Ramnaney and Meredith Gallen told stories of clients who, while in custody, were charged with gassing (throwing urine or feces) during an episode clearly related to their mental health. Rather than offering the help they needed to stabilize and function in a way that keeps them and the people around them safe, their clients were prosecuted. The public defenders who spoke about this said cases like these are a waste of time and resources that could be put into existing support programs which are under-utilized. The prosecution process also further traumatizes clients who are already suffering and vulnerable.

The public defenders and other attorneys interviewed for this report spoke of issues with wide variations between deputy District Attorneys and across different regions. Elisabeth Smith, who has worked in many county courts and has represented both juveniles and adults charged with both misdemeanors and felonies, noted that what might be charged as a felony in one region would be prosecuted as a misdemeanor in another. Ramnaney spoke about how different Deputy District Attorneys offer wildly different plea deals on similar charges. Even the same deputy may make different offers: Ramnaney recounted that prosecutors would offer different deals to different clients, saying, “there’s something creepy about your client,” or “I just don’t like your defendant.”

Ivette Alé, Senior Policy lead with Dignity and Power Now and the lead organizer with the JusticeLACoalition, spoke of “a specific program within the DA’s office that prosecutes parents for their children not going to school. It’s disguised as accountability for parents. And we would argue that if the goal here is to get young people to school, that providing those millions of dollars to services for families would be much more impactful.” The Abolish Chronic Truancy (ACT) program is one of three programs funded under “Community Prosecution”, which in the County of Los Angeles 2020-21 Recommended Budget, is funded at a cost of \$1,658,000 to the County.³³

“Usually the people who are arrested for misdemeanors are being arrested for other misdemeanors at some point down the line because of over-policing certain communities and targeting certain people. So do we just keep on arresting and prosecuting people for misdemeanors or do we focus more so on what sort of diversion and support systems are available to keep people from not continually interacting with the police and the criminal-legal system. Why are we doing that to such a large population? Seventy percent of all cases is a bad use of resources.”



YEHUDAH PRYCE

Thomas Gonzalez, a public defender who has represented youth in the juvenile delinquency system, said that in his experience, every single wobbler (a charge that can be brought as either a misdemeanor or a felony at the discretion of the prosecutor) is brought as a felony. The wobblers he most commonly sees are criminal threat (PC 422), assault (PC 245(a)4), and illegal possession of a firearm (various code sections). Despite the fact that frequently, the “criminal threat” charges are brought against a youth who said “I’m going to beat you up,” Gonzalez reports that in his experience they are always brought as felonies. The data the L.A. DA’s office provided show that 78.1% of criminal threat and 88.2% of assault charges are brought as felonies.³⁴

Gonzalez also explained that despite the option to charge as a misdemeanor, prosecutors sometimes push for the harshest punishments in these cases. He stated that specifically for minors charged with possession of a firearm, the L.A. DA’s office policy is to always ask for the harshest punishment. Options exist for people under 18 to be monitored on probation at their homes with their families, or if that is not possible, “suitable placement” puts them in a group home which allows a degree of flexibility and integration with the rest of society. Young people who have committed more than one serious offense may be sentenced to probation camp, which Gonzalez described as “kid jail”. Yet he says that prosecutors ask “right off the bat for the most serious possible sentence that could exist.” Fortunately, judges in these cases often use their discretion to sentence the individual to something

less than the most serious sentence, but Gonzalez considers the automatic response of always asking for the toughest punishment troubling.

Tough punishments also come from the use of sentencing enhancements. Elisabeth Smith said, “Are things overcharged? Yes. Does the L.A. DA’s office use enhancements too much? Yes, especially gang enhancements.” Jessop explained, “The DA is not actually incarcerating people for their crimes. What they’re doing is they’re incarcerating for things that are super enhanced. So, let’s say somebody goes and steals a candy bar from the store. The DA is going to end up charging on residential burglary because they can. And on top of that, they’ll add up a whole bunch of different gang injunctions to actually enhance that crime.”

Saavedra has personal experience with gang enhancements: “As a youth I was erroneously registered as a gang member, and that was used to enhance my sentence as an adult. In prison that gang labeling increased my security level and resulted in my placement in solitary confinement.” He said, “gang enhancements are really, really oppressive, discriminatory, and cause people to do way more time than they should. And it’s so discriminatory and it’s so easy for them to say that you’re a gang member based on an officer’s testimony or a piece of clothing, or what have you.”

He explained how difficult things can get once you have the gang label, regardless of whether you are no longer associated with the gang, or were wrongly placed on the list in the first place:

“The DA will claim that you have not disassociated with a gang. They’ll [the DA] have informants or other things where they say, ‘Oh yeah, this person still talks to this person,’ But it’s so biased. And the fact that at least 90% of everybody in prison comes from a quote unquote “gang”, in some way, from a certain neighborhood. So it’s ridiculous. And it doesn’t make sense to tell a person, ‘Oh, you can’t talk to these people,’ that, ‘we’re gonna put you in a small box, but we want you to be anti-social.’ ‘Cause if you talk to them, now you’re an associate of the gang, and you get that label. So it’s really a catch-22 because on the one hand, if you stay quiet to yourself, that’s not healthy for you. And then it could also create problems. People could be thinking like, ‘what’s wrong with this person?’ You know, it’s not, it’s not conducive to how we conduct our lives out here and how we have to work with different people.”

MICHAEL SAAVEDRA

Public Defender Thomas Gonzalez spoke about how gang allegations can severely affect young people for the rest of their lives. He explained that a gang enhancement for a sustained juvenile adjudication triggers requirements to register as a gang member with the local police station, and potentially place a young person under other restrictions about where they can live and who they can see. Gonzalez said, “In the case of children, this means a kid could be charged with a new crime simply for living with their parents or in their own home.” This gang registration and these restrictions can stay with people for the rest of their lives, even if they never commit another crime. Gonzalez continued,

“When a kid tags a wall with the name of a gang, that is supposedly gang activity for the benefit of the gang. But my opinion is that often you have someone who is 14, 15, 16 years old and they’re being put up to that, or they’re under the influence of other folks who are causing them to engage in this bad behavior and/or maybe they have bad home lives. So they look to social peers for validation. I just don’t think you can really say anybody that young is a committed, active member of a criminal street gang. I don’t think 15 year-olds have the ability to make that determination yet. I don’t think they’re acting as autonomous people yet.”

THOMAS GONZALEZ

He also explained that, despite overwhelming scientific evidence that young people’s brains have not finished developing³⁵, “Gang allegations can be charged in juvenile court the exact same way they’re charged in adult court and there is no consideration for the age of the offender.” Furthermore, this is not an issue that only comes up occasionally. In his experience, “Gang allegations in juvenile court are very, very frequent.” Jessop, who was wrongfully convicted and unlawfully incarcerated for three years, put it more plainly: “If you come from an impoverished community, if you are even in any way associated, directly or indirectly associated with gang culture, you’re going to get an enhancement.”



Recommendations

- ❑ Improve data collection & dissemination practices, particularly around race
- ❑ Create a “Decline to Charge / Automatic Pre-Plea Diversion” list of charges

For charges ranging from drunk driving³⁶ to more serious felonies,³⁷ it has been shown that prosecution and lengthy incarceration terms do not necessarily increase public safety or reduce recidivism. The DA’s Legal Policy Manual outlines a whole host of appropriate reasons for prosecutors to decline to charge, including “when criminal prosecution would defeat... a deputy’s duty to foster and maintain a just and lawful society,”³⁸ when “the application of criminal sanctions to the accused’s conduct is contrary to the legislature’s intent in enacting the particular statute,”³⁹ and/or when “the cost of prosecution... may be disproportionate to the importance of prosecuting.”⁴⁰

Given the inability of the criminal-legal system to support the needs of people experiencing economic insecurity and mental health issues, the L.A. DA’s office should create a list of offenses which they automatically will decline to charge. Another list of charges should be created for which the default position will be pre-charge or pre-plea diversion into a program that can address the underlying needs of the individual in question, and for which charging requires a written statement of the reasons for deviation from the default diversion policy, and must be approved by a supervisor.⁴¹ These lists should initially include most, if not all, misdemeanors and low-level felonies, including

but not limited to driving with a suspended or revoked license, crimes associated with being the victim of sex trafficking, most drug charges, and most trespassing charges. This program should be pre-plea in order to ensure that noncitizens can participate without triggering subsequent immigration consequences.⁴² We have included in this report a recommended list, the contents of which can be found in Appendix 3.

Declining to charge just misdemeanor- and infraction-level paraphernalia possession (HSC 11364), driving without a license or with a suspended license (VC 12500(a) and VC 14601.1(a)), and possession of a controlled substance (HSC 11377) charges would eliminate 102,910 charges. This represents 20% of all charges filed by the L.A. District Attorney’s office in 2017-18, and over 50% of these charges are dismissed anyway. It would also entirely remove from the justice system 48,260 people for whom those charges were the only ones they faced in 2017-18, or over 24,000 people per year.

Some of the consequences associated with contact with the criminal-legal system include time lost to defending against charges that are ultimately dropped or for which the person is acquitted, time in jail away from school, a job, and loved ones, and/or a criminal record. In addition, vehicle-related charges (and many others) can have an immediate and direct monetary impact on an individual. According to the Los Angeles Times, “The city charges \$133 for the tow, \$115 to release the vehicle, and a \$45.65 fee for each day the car is in storage. The fees mount so quickly that some people never retrieve their cars.”⁴³

Figure 5: Charge Level Outcomes

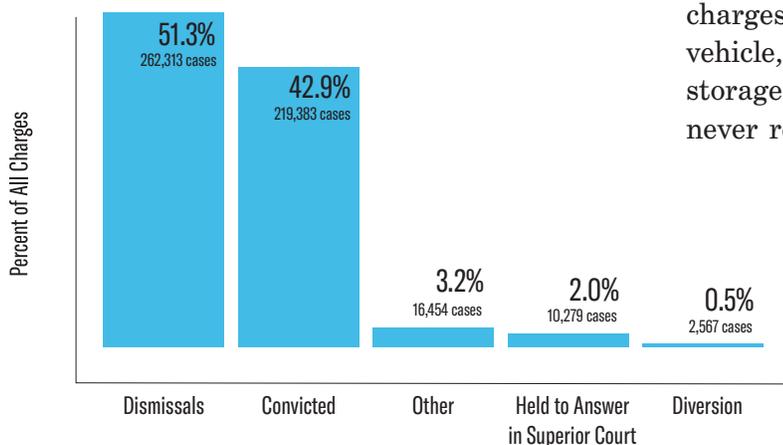


Figure 5: Charge-level outcomes, showing over 50% of all charges are dismissed, and fewer than 1% are diverted.

These outcomes are charge-level and not case-level, as case-level outcomes were not provided by the L.A. DA’s office.

Given the supposedly high bar for filing charges outlined by the L.A. DA's Legal Policies Manual, it is unclear why over half of all charges brought by the office are dismissed (see Figure 5). Setting that high bar for filing is vital to maintaining the presumption of innocence. Bringing charges that are not likely to be substantiated slows down proceedings (denying people the right to a speedy trial) and creates more work for prosecutors and public defenders (denying people the right to high quality representation, and denying the public the protections of a legal system with sufficient resources for every trial). If, as a matter of policy, the L.A. DA's office followed the recommendations of the ACLU's Decline to Charge / Automatic Pre-Plea Diversion list, it could eliminate 60.5% of the total charges filed by the DA⁴⁴, 48.5% of which are currently dismissed anyway. 23% of all people charged by the L.A. DA's office had all of their charges dismissed, indicating that the DA's

office is not following their Legal Policy Manual's requirement that they only prosecute charges that are likely to result in a conviction. Therefore, a policy that the office declines to prosecute minor charges will better serve the public in reducing the harm that contact with the criminal-legal system has on individuals and the community at large.

If the District Attorney's Office only files charges when it is likely to result in a conviction, most if not all of the 23% of people who have all their charges dismissed (61,699 in 2017-18) could be spared the social and economic consequences of going through criminal proceedings. The L.A. DA should work to ensure that deputies are complying with one of the most basic directives outlined in the Legal Policy Manual.

IMPROVE DATA COLLECTION & DISSEMINATION PRACTICES, PARTICULARLY AROUND RACE

*"From the community experience, we're hearing about these charges being filed against organizers and protestors, but **getting data from the DA's office is its own challenge**. So that's one of the hurdles. We have the LAPD data, we have the anecdotal reports from community members and folks that have been charged and are fighting their cases right now. And so, to what extent, that is a full translation, it remains to be seen because **we don't have the data.**"*



IVETTE ALÉ

This analysis of the prosecution data provided by the Los Angeles District Attorney's office is woefully incomplete without addressing race. However, because the data does not include race information, that analysis is impossible to complete. It is vital that the L.A. DA's office begin tracking race information in order to determine the racial impact of their work and policies.

The analysis was further hamstrung by the fact that unique individual identifiers were not provided across cases. If the office has that data, it is concerning that they did not provide it. If they do not have that data, that itself is concerning, as it makes it impossible to identify opportunities to intervene where individuals have high rates of system involvement. With regard to charging decisions, the Los Angeles DA's office should analyze the racial impact of its charging decisions, release the data used for that analysis publicly, and then alter office charging policies in order to eliminate any racial disparities in charging. The dataset provided also did not appear to contain information about enhancements. Given the information provided through interviews with individuals who have personal and professional expertise regarding gang enhancements, it is clear that enhancements serve little purpose for keeping the community safe, and their use should be eliminated.

All data collected by the L.A. DA's office should be easily accessible to the public, and be released in a timely manner so that the lag between data collection and release is minimized.

Reviewing Past Cases

The Current State of Affairs

Former Los Angeles District Attorney Jackie Lacey created a Conviction Review Unit (CRU) in 2015 in order “to ensure that innocent people are not currently incarcerated and to maintain the office’s tradition of pursuing the truth and seeking justice.”⁴⁵ The Appeal reported in February of 2020 that the unit is staffed by three deputy district attorneys, along with a few paralegals and investigators.⁴⁶ Despite covering the largest county in the country, it’s staff size pales in comparison to other Conviction Review Units of other District Attorney’s offices; the CRU in the Brooklyn DA’s office has nine attorneys, plus two investigators and two paralegals, and Philadelphia’s Conviction Integrity Unit (CIU) is staffed with seven full-time attorneys plus three attorneys who also review sentencing decisions.⁴⁷

The difference in the staffing of the unit has translated to how many exonerations the CRU has been able to obtain. In five years, the unit has only overturned three convictions; Baltimore’s Conviction Integrity Unit has overturned three times that many in the same amount of time,⁴⁸ and Brooklyn’s CRU has exonerated 18 people in that time.⁴⁹

Two organizations unaffiliated with the L.A. DA’s office work to overturn wrongful convictions in Los Angeles County: The Loyola Law School’s Project for the Innocent (LPI), and the California Innocence Project. Despite the two organizations having presented to the L.A. DA’s CRU over twelve cases where the incarcerated individual has a good

case for exoneration, only one has been taken on by the office.⁵⁰ Furthermore, many individuals who advocates believe are likely to be innocent receive “short and cursory emails, without context or the results of any investigations,” from the CRU when their claim is denied.⁵¹

In addition to being able to review past work for **wrongful** convictions, as of January 1, 2019, Assembly Bill 2942 modified California Penal Code 1170(d)(1) to give District Attorneys the authority to review prior convictions in order to determine whether the sentence administered still furthers the interest of justice.⁵² A District Attorney who believes a sentence no longer serves the interest of justice can recommend that the court recall the current sentence and resentence to any legal sentence, including time served.

When a District Attorney refers someone for recall and resentencing, the statute states that courts “*may consider postconviction factors, including, but not limited to, the inmate’s disciplinary record and record of rehabilitation while incarcerated, evidence that reflects whether age, time served, and diminished physical condition, if any, have reduced the inmate’s risk for future violence, and evidence that reflects that circumstances have changed since the inmate’s original sentencing so that the inmate’s continued incarceration is no longer in the interest of justice.*”⁵³

This resentencing power was created by the Legislature to ensure that *“when a sentence includes incarceration, this purpose is best served by terms that are proportionate to the seriousness of the offense with provision for uniformity in the sentences...”*⁵⁴ However, currently, sentence length and time served in California vary widely due to technical provisions in how laws are passed. Furthermore, when old laws are struck down, deemed no longer in the interest of justice by voters

or courts, there is frequently no remedy for the hundreds or thousands of people serving time who were sentenced under these invalidated laws.

The result is an increasingly aging and medically vulnerable segment of the incarcerated population. The current prison population does not pose the greatest risk to public safety, rather, the population reflects the consequences of extreme and uneven sentencing laws.

Personal & Professional Perspectives

Klara Stephens, a research scholar with the National Registry of Exonerations, believes that, given the size of L.A. County, there should be a lot more exonerations coming from the L.A. DA’s Conviction Review Unit: “We know that Cook County and New York and Los Angeles have the three largest police forces in the country, but if you compare the number of exonerations in Cook County and New York and compare them with LA, the exonerations are much much lower in the conviction integrity unit. Unless there’s something extra special going on where L.A. doesn’t make any mistakes and the other places do, then there is either a lack of resources put toward the CIU or a lack of political will.”⁵⁵

During the first Los Angeles District Attorney debate, in December of 2019, Megan Baca, an attorney and investigative coordinator for the Loyola Project for the Innocent (LPI), shared some of her organization’s interactions with the CRU, including “an incident in which the CRU sent a letter rejecting a client several months after the client had already been released, an instance when a letter was addressed to an attorney at LPI as though they were the client, and an occasion

when the CRU failed to properly interview an eye-witness who wished to recant his previous trial testimony.”⁵⁶

University of San Francisco law professor Lara Bazelon has stated, “The whole point of a CIU is that it be staffed by people who are capable of assessing cases independently and objectively... [Expecting a gang prosecutor to] review what is essentially her life’s work and find that it is deeply flawed and fundamentally unfair seems like an exercise in futility. Explicit and implicit bias, tunnel vision, and simply wanting to feel good about her life’s work will all militate against fairness and objectivity.”⁵⁷ Nevertheless, according to Mike Semanchik, managing attorney at the California Innocence Project, some of the attorneys staffing the L.A. DA’s CRU are former gang unit prosecutors, and even leave the CRU to return to prosecution.⁵⁸

Recommendations

- ❑ Restructure the Conviction Review Unit to improve independence and effectiveness
- ❑ Actively review cases that could be eligible for resentencing under PC 1170(d)(1)

RESTRUCTURE CONVICTION REVIEW UNIT TO IMPROVE INDEPENDENCE AND EFFECTIVENESS

The Los Angeles District Attorney's office should restructure the Conviction Review Unit to make it more independent and capable of carrying out its mission to free wrongfully convicted individuals. The unit should have outside counsel who report to the DA independently, like Larry Krasner has in Pennsylvania and Craig Watkins had in Dallas. It should also regularly publish public reports

on its work in order to be held accountable, including the number of cases reviewed, ongoing investigations, and exonerations. If the restructured CRU is actually independent, and not merely an assignment where career prosecutors confirm their and their colleagues' work, it likely warrants further staffing and funding.

ACTIVELY REVIEW CASES THAT COULD BE ELIGIBLE FOR RESENTENCING UNDER PC 1170(D)(1)

The Conviction Review Unit should not be focused only on cases involving claims of actual innocence, it should also actively review cases that could be eligible for resentencing under Penal Code section 1170(d)(1). Prioritizing the review of cases for individuals over the age of 50 years old makes sense from both a recidivism and a financial standpoint.

The U.S. Department of Justice's National Institute of Justice reports that the cost of incarcerating individuals over the age of 50 is more than twice that of the general population.⁵⁹ Californians who are granted parole following a "term-to-life" prison sentence tend to have been convicted of some of the most serious charges, and on average are 50 years old.⁶⁰ Despite the seriousness of their charges, CDCR reports that

this population's recidivism rate is around one-tenth that of the general parole population.⁶¹ 23% of California's prison population is 50 years old or older as of 2017,⁶² so prioritizing this age group could have a huge impact on the prison population and overcrowding, in addition to serving the interests of justice.

The L.A. DA's office should develop a procedure for actively reviewing cases that could be eligible for resentencing under PC 1170(d)(1), and the Conviction Review Unit seems like an appropriate place for it. The cases of individuals over the age of 50 should be prioritized for review, as they are more likely to suffer more from incarceration, less likely to recidivate, and cost more to incarcerate than the general population.

Prosecuting Law Enforcement

Murders by Law Enforcement

From 2012 through May 29, 2020, L.A. County police have killed 338 people.⁶³ Black people make up 8% of L.A. County's population, yet 20% of people killed by police since 2012 have been Black.⁶⁴ Some question the accuracy of these counts, and leaders of the Black Lives Matter movement put the tally higher, at 601 civilians killed by local law enforcement.⁶⁵

The Los Angeles District Attorney's office states that it has reviewed 252 fatal officer-involved shootings, declining to prosecute all but one.⁶⁶ With 338 individuals killed by police according to data obtained by the Los Angeles Times, this means that the office has failed to even review 25% of fatal police shootings. Using the Black Lives Matter

count of 601 police killings increases that to 58% of fatal encounters with law enforcement having gone un-reviewed.

One example occurred when, in 2018, the L.A. District Attorney's office declined to prosecute police officer Clifford Proctor who killed Brendon Glenn, an unarmed man who was unhoused in May 2015. This decision came despite the Chief of Police at the time, Charlie Beck, recommending criminal charges against the officer, a highly unusual deviation from the standard support Chiefs give their officers across the country.⁶⁷ In a letter to the Board of Police Commissioners, Chief Beck concludes.⁶⁸

1. "The officer [Proctor]'s decision not to communicate with one another or develop a tactical plan... was a substantial deviation, without justification, from approved Department tactical training,"
2. "Officer Proctor's decision to fire his weapon was not reasonable... [and his] actions were a substantial deviation, without justification from approved Departmental tactical training," and
3. Officer Proctor "likely escalated the situation" when he yelled at Glenn using expletives.

Another example of L.A. DA's office declining to prosecute a police officer who killed a civilian occurred in 2019. Paul Rea, eighteen years old and standing at 5'2, was a passenger in a car that allegedly ran a stop sign in East LA. According to the driver, when deputies pulled the car over, they accused the driver of being high on marijuana, demanded he exit, and threatened to kill him if he did not. Rea exited the car, and deputy Hector

Saavedra fired a round of shots, killing the young man. Prosecutors claim the shooting was justified as self-defense in response to an armed Rea "nor does it show Rea punching Saavedra", and that Rea never handled a gun. punching the officer.⁶⁹ However, even the DA's office admits that the surveillance video of the interaction "does not depict a struggle,"

Furthermore, the deputy who shot Rea was “unable to describe what the gun looked like.”⁷⁰ In spite of these discrepancies, the District Attorney’s office declined to file charges against deputy Saavedra, citing, among other things that, “Rea looked at Saavedra in a manner that Saavedra interpreted as

Rea intending to kill him.”⁷¹

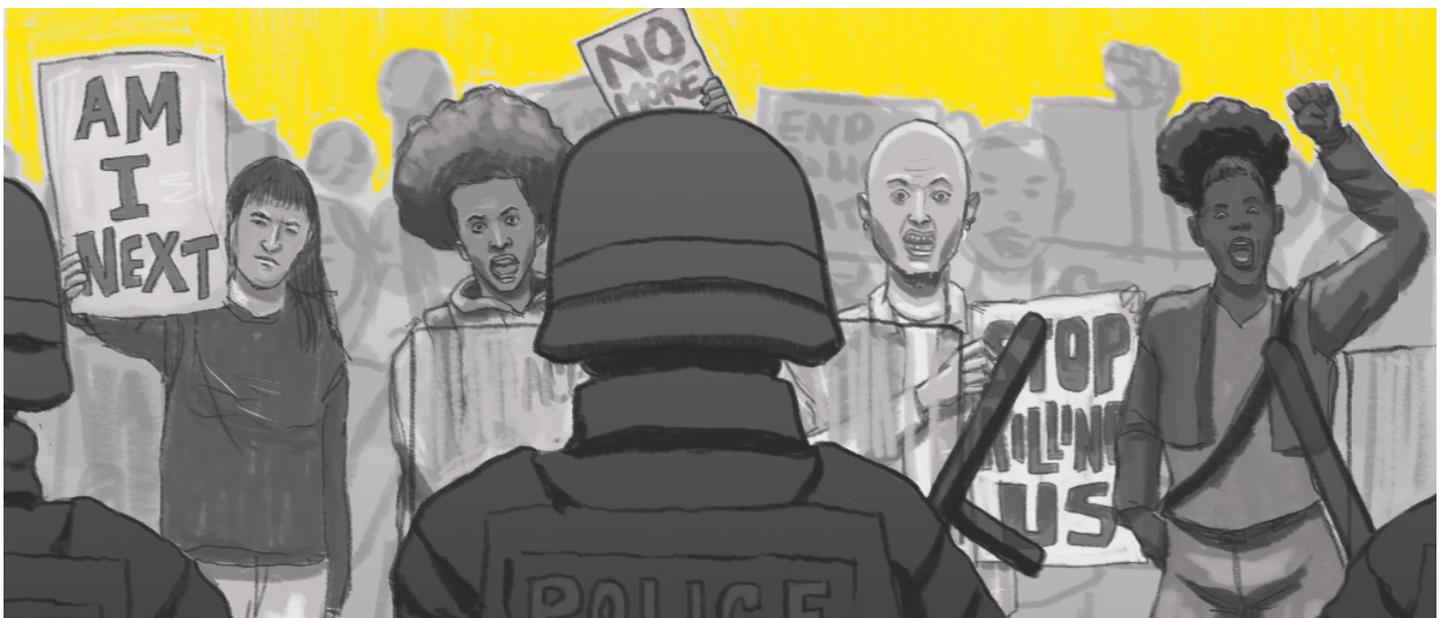
Given these two examples out of hundreds more, many wonder what it would take for the District Attorney’s office to file charges against a police officer who kills a civilian.

Other Violent Abuses of Power

The L.A. DA’s office has also declined to charge powerful individuals when they have been involved in other uses of force. In 2013, Milton Olin, Jr. was cycling in the bicycle lane when he was hit and killed by an L.A. Sheriff’s Deputy. Despite not filing charges against the officer, the District Attorney’s office wrote, “[Deputy] Wood entered the bicycle lane as a result of inattention caused by typing into his (Mobile Digital Computer).”⁷² In 2014, California Highway Patrol officer Daniel Andrew tackled Marlene Pinnock on the shoulder of a highway and punched her repeatedly in the head in an attempt to prevent her from running into traffic, according to the CHP.⁷³ The L.A. DA’s office did not file charges.

In June of 2020, the L.A. DA’s office did eventually file charges against Los Angeles police officer Frank Hernandez for punching an “unarmed man more than a dozen times in the head, neck and body.”⁷⁴ However, that only happened over a month after the incident occurred, and only after considerable political pressure was put on the DA’s office.

The L.A. DA’s office states that it “has filed criminal charges against more than 200 law enforcement officers for murder, sexual assault, domestic violence and financial fraud. Of those, 24 law enforcement officers have been charged with excessive use-of-force. Eight of those officers were convicted and six were acquitted. Nine cases are pending. One was dismissed after the defendant died.”⁷⁵ However, even when the District Attorney’s office has filed charges against law enforcement, the consequences seem different for them than for other people. Los Angeles Sheriff’s deputy Giancarlo Scotti was charged with engaging in unlawful sexual activity with six separate women while they were inmates at the Century Regional Detention Center. Despite a potential sentence of seven years and four months given the charges in his plea, the prosecutor’s office only requested three years, and the judge sentenced him to only two, which he was allowed to serve at a fire camp, “an assignment that is highly coveted among most prisoners, as it means one does not languish in a cell and is not subject to many of the indignities of a regular prison.”⁷⁶ He was not required to register as a sexual offender.



Personal and Professional Perspectives

All of the people interviewed for this report agreed that the way the District Attorney's office has handled police violence is a major concern to members of their community. Ivette Alé, Senior Policy Lead at Dignity and Power Now and lead organizer with the JusticeLACoalition, revealed, "The lack of accountability for law enforcement violence by the L.A. DA's office is something that is top of mind for Black and Brown folks here in Los Angeles."

Yehudah Pryce (whose work for Turning Point's Returning Citizens Stimulus program includes surveying citizens who were recently released from incarceration regarding their experience with the district attorney) said, "Jackie Lacey's office is doing a horrible job prosecuting police. She doesn't really do it at all. Justice is supposed to be blind, and consistent. This pretty much aligns with Jackie Lacey's adversarial approach to the community."

Michael Saavedra, the Legal Coordinator & Youth Mentor at the L.A. Youth Justice Coalition and Community Organizer with Dignity and Power Now, explained why this poses such a problem for his communities. "In regard to police shootings in L.A. County, not holding any of the officers accountable, not prosecuting them is a huge problem and creates a huge distrust in the community of the DA's office. I think Lacey has done a horrible job in prosecuting killer cops. And we have the statistics. We have the research that shows... the areas of L.A. County where most of the police shootings happen are communities of color."

While police officers were the focus of people's concerns, there was a sense that the District Attorney's office serves an exclusive community. While poor communities of color are prosecuted for every possible crime, even crimes they do not commit, police officers and wealthy people commit heinous crimes and then are not charged by the L.A. DA's office. Alé said that the L.A. DA's office "focuses on targeting community members and not prosecuting those in power that are inflicting violence on our community."

Alé also commented on the Los Angeles District Attorney's Bureau of Victim Services. "We're also hearing that the DA's office is asking for millions of dollars for victim services. The DA's office is asking for money that should be going to social services, and this is just one example of that." Pryce agreed, adding, "I do not believe it is appropriate for the Bureau of Victim Services being run through the DA's office, especially since the DA has taken an adversarial position against citizens it deems as 'offenders.' This becomes particularly problematic when most 'offenders' were originally victims at one point, and according to my own survey, they did not receive adequate redress by the DA's office."

Douglas Jessop was unlawfully incarcerated for three years due to a wrongful conviction by the Orange County District Attorney's office. Jessop said that having Victim Services run through District Attorneys' offices "is quite plainly a conflict of interest." He believes that his wrongful conviction was due, in part, to this conflict of interest, which created "unfair bias and incentive for the county and District Attorney. They become predators rather than purveyors of truth and security. In my case people were made to be victims who weren't even involved in my case or relevant to it."



Recommendations

- Support the creation of an independent law enforcement prosecution entity
- Support the creation of an independent victim services entity

“There is something structurally problematic about the role of a local prosecutor in police–defendant cases.”

KATE LEVINE,
Acting Assistant Professor of
Lawyering, NYU School of Law⁷⁷

“There is a natural conflict of interest when district attorneys - who typically work closely with the police to bring cases against suspected criminals - are faced with prosecuting those same officers. District attorneys count on officers’ testimony to support their cases during trials of alleged criminals. There is a particular reticence in bringing charges against officers who have been “productive” and who have worked closely with the district attorney’s office. In some jurisdictions, district attorneys are elected and are aware that the powerful police unions and their supporters may withdraw their support if a police officer is prosecuted.”

HUMAN RIGHTS WATCH⁷⁸

SUPPORT THE CREATION OF AN INDEPENDENT LAW ENFORCEMENT PROSECUTION ENTITY

In order to better serve the public in cases of police misconduct and brutality, the Los Angeles District Attorney’s office should support the creation of an entity entirely separate from the District Attorney’s office for the purpose

of prosecuting cases against law enforcement officials. The L.A. District Attorney should publicly advocate for this separation, and transfer the necessary ongoing funding from the DA office’s budget to this new entity.

SUPPORT THE CREATION OF AN INDEPENDENT VICTIM SERVICES ENTITY

In that same vein, the DA’s office should also transfer all services provided by the Bureau of Victim Services to an independent entity. The District Attorney does not represent victims, but instead, the government, or generally the public.⁷⁹ Providing victim services creates a relationship between the District Attorney’s office and an alleged victim. This relationship may make prosecutors biased toward finding any individual guilty of the alleged crime, regardless of their actual guilt, in order to provide the alleged victim a sense of closure. If the alleged victim identifies a specific individual as the perpetrator, the District Attorney has an even higher likelihood of being biased toward finding that individual

guilty. Victim services provided by the District Attorney’s office may also be compromised due to the prosecutor’s need for testimony. Consciously or not, victim services provided by the District Attorney’s office may be of lower quality to victims who are unwilling or unable to provide the testimony prosecutors want.

In order to better provide services to victims, the current Bureau of Victim Services should be closed, and a new entity, separate from the DA’s office should be established. The funding currently provided to the L.A. DA office to support the Bureau of Victim Services should be transferred to this new entity.

Diversions

Diversions in Los Angeles County

ANALYSIS OF PROSECUTION DATA

Out of the charging data provided by the Los Angeles District Attorney's office, 0.72% of the individuals received diversion for at least one charge (1,924 out of 266,405 people), and 0.52% had all charges diverted (1,395 out of 266,405 people). In Figure 6, we can see that, for the charges with the highest total number of diversions, some have a much higher rate of diversion (as high as 3.6%) than the overall diversion rate (0.5%, not shown). However, even for the most-diverted charges, the rate is very low. This shows that these charges, which are among the most-prosecuted charges overall, can be and are occasionally diverted, even if only for an unacceptably low number of people. Any increase to the diversion rate for these charges will have a large impact on the overall diversion rate, as they represent some of the most-prosecuted charges.

Because the data provided by the Los Angeles District Attorney's Office includes only charges that the DA's office actually filed, it does not include any diversion that occurs pre-filing or pre-arrest.

In response to the Public Records Act request sent by the ACLU of Northern California, which asked for, "All documents and records related to all diversion programs offered or used by the DA's office, how many people utilized those programs, demographics of those people, the charges they were facing, outcomes of those cases, requirements for completing diversion, and any charges or costs associated with those diversion programs for calendar years 2017 and 2018," the L.A. DA's office responded,

Figure 6: Rate of Diversion

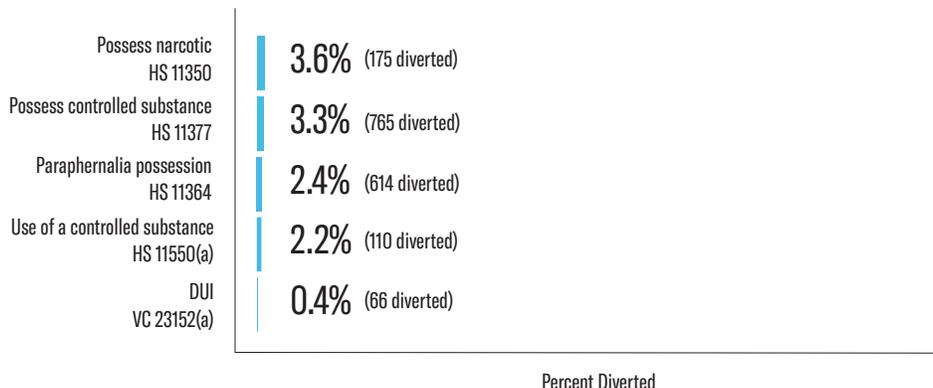


Figure 6: Rate of diversion for charges with the highest total number of diverted charges.⁸⁰

“We do not keep formal statistics of how many people enter the program[s] and who successfully completes the programs... The office does not keep statistics for demographics.”

However, they did report that the deputy district attorney assigned to the Alternate Sentencing Courts assembled estimates for six programs: L.A. County Drug Court, Co-Occurring Disorders Court, Sentenced Offender Drug Court, Women’s Re-Entry Court, Veterans Court, and Community Collaborative Court.

The Deputy District Attorney estimated that in 2017 and 2018:

- 971 individuals were accepted into those programs
- 344 people completed the programs successfully,
- 265 people were terminated

This total represents 0.36% of the total number of people prosecuted by the L.A. DA’s office during that time period.⁸¹ Particularly for an office that draws the attention of the media so frequently to its diversion efforts, diverting less than half of one percent of the number of people they prosecute seems like an under-utilization of the programs they tout so often.

L.A. DIVERSION PROGRAMS

In 2015, the Los Angeles County Board of Supervisors established the Office of Diversion and Reentry, whose mission is:

1. to develop and implement county-wide criminal-legal diversion for persons with mental and/or substance use disorders,
2. to provide reentry support services based on individual’s needs,
3. to reduce youth involvement with the justice system

The L.A. DA’s office’s response to the ACLU of Northern California’s PRA states “*eligible candidates have to be in custody, suffer a mental illness, be homeless, and plead to the crime charged... the prosecutor has input, but no veto power, on who should enter these programs. Entrance into the programs is solely at the judge’s discretion... ODR is a separate entity from the L.A. DA’s office. As of January 2019, the L.A. DA’s office has been keeping informal, manual records of cases going into the ODR court, but we kept no records before 2019.*”

In 2018, AB 1810 was passed which grants judges the authority to divert individuals who have behavioral health conditions into a mental health program instead of criminal proceedings. If the participant complies with the program, charges can be dismissed, and records of the arrest and prosecution can be sealed.⁸² When it was initially passed, there was no list of ineligible charges, and

the District Attorney’s office voiced its support of Mental Health Diversion in general, but cited the need for amendments, and for giving individual counties the authority to craft rules that work for them.⁸³ In the first 18 months of the law’s existence, 342 requests for diversion were filed in Los Angeles, with prosecutors opposing 43% of them.⁸⁴

On February 12, 2019, the L.A. County Board of Supervisors commissioned the Office of the CEO to create a public-private County Work Group on Alternatives to Incarceration (ATI), with the mission statement of developing a “road map, with an action-oriented framework and implementation plan, to scale alternatives to incarceration and diversion so care and services are provided first, and jail is a last resort.” The working group convened community advocates, service providers, community members and staff from multiple County departments, and included the Head Deputy District Attorney as a voting member.

STRATEGY 1 – Expand and scale community-based, holistic care and services through sustainable and equitable community capacity building and service coordination.

STRATEGY 2 – Utilize behavioral health responses for individuals experiencing mental health and/or substance use disorders, homelessness, and other situations caused by unmet needs; avoid and minimize law enforcement responses.

STRATEGY 3 – Support and deliver meaningful pretrial release and diversion services.

STRATEGY 4 – Provide effective treatment services in alternative placements, instead of jail time.

STRATEGY 5 – Effectively coordinate the implementation of ATI recommendations, ensuring that strategies work to eliminate racial disparities and to authentically engage and compensate system-impacted individuals.

The group developed 114 recommendations categorized into five strategies.⁸⁵

On March 10, 2020, the Board of Supervisors voted unanimously to establish a new office to lead efforts to implement the strategies and recommendations of the Work Group.⁸⁶

L.A. DA Diversion Policies

PRE-FILING DIVERSION PROGRAM:

In 2017, the L.A. DA’s office announced the creation of the Pre-Filing Diversion Program (PDP), which is “aimed at diverting low-level, nonviolent offenders out of the criminal justice system.”⁸⁷ Individuals accused of both felony and misdemeanor offenses qualify. If individuals successfully complete the program, charges are not filed, but if the terms of the PDP are violated, participants are prosecuted for the original charges. The L.A. DA office’s Legal Policies Manual Chapter 6, Section 1 describes the program. It stipulates that terms of the program include, but are not limited to intensive monitoring, treatment, counseling, restitution, community service, protective/stay-away conditions, and education. The requirements are tailored to each individual and are determined by the PDP officer, but “restitution shall be required in all cases involving losses.”⁸⁸ Referral to the PDP is at the discretion of the filing deputy, and the Legal Policies Manual explicitly states that not all individuals who are eligible for the program need to be referred.

The eligibility criteria set forth for the PDP in the Legal Policies Manual are lengthy, and almost exclusively define the ways in which individuals should be excluded from the program. Of particular note is that prior felony convictions, pending charges in another jurisdiction, participation in a misdemeanor or

felony diversion within five years prior to the commission of the alleged offense, having a restraining order in effect, and having “exhibited criminal sophistication in the conduct underlying the current offense(s),” all disqualify individuals for consideration for the PDP. If the conduct underlying the charge(s) in question involves possession of a firearm, possession for sale of a controlled substance, or very broadly “gang activity”⁸⁹ individuals are excluded, except under certain circumstances.⁹⁰

If the PDP officer deems it safe, PDP hearings may involve both the victim and the accused individual at the same meeting. Attorneys are permitted, but only in an advisory role, and the parties must speak for themselves. “PDP officers have discretion to fashion a resolution that fairly addresses the concerns of the parties and public safety.”⁹¹ The PDP also requires participating individuals to make restitution to the victim, as would have been required in the event of a conviction. Failure to pay full restitution within the period instructed by the PDP officer is grounds for termination of the program and subsequent filing of the original charges. No mention is made in the Legal Policies Manual of consideration of an individual’s ability to pay in the termination determination if full restitution is not paid.

The Legal Policy Manual stipulates that “in order to evaluate the efficacy of the PDP,” PDP officers must enter statistical information, “both for offenders whose cases are referred to the PDP and for the program overall... into the PDP database on a daily basis.” Monthly reports are

also required to be generated. Despite having specifically requested all documents regarding diversion programs, no monthly reports regarding the PDP were provided in response to the Public Records Act request sent by the ACLU of Northern California.

Personal & Professional Perspectives

Individuals interviewed for this report with personal experience with incarceration, and professional experience working with individuals who have direct experience with the L.A. DA’s office expressed skepticism that the office could address diversion well. Yehudah Pryce said that diversion programs may exist, but people don’t know about them. Douglas Jessop stated, “I don’t know of anybody that’s gotten help from any diversion program.”

Ivette Alé, reports that diversion through the L.A. DA office is ineffective. Alé stated, “The department within L.A. County that has been the most effective in diversion is actually the Office of Diversion and Reentry. They’ve diverted well over 5,000 folks in the last three or four years. They divert some of the most serious cases and some of the most serious charges and provide mental health needs successfully. They have an over 86% success rate and they work in tandem with community-based organizations and community-based transitional housing programs to move folks with mental health and behavioral health needs out of the jail system and into the community, both pre-trial and also post-conviction.” Alé also said that the District Attorney should stay out of administering diversion programs. “From our perspective neither probation nor the DA’s office should be playing a role in administering diversion programs. Instead, they should be connected to social workers and peer navigators as well as mental health professionals.”

Alé reported that one of the reasons the L.A. DA’s office does a poor job of diverting individuals is due to incentives. From their interaction with Los Angeles County prosecutors through Los Angeles County’s Alternatives to Incarceration Work Group,

Alé told me, “The women that were in the DA’s department provided more context around some of the limitations that they were experiencing. So for instance in order to get promoted, it would require them to focus on prosecution rather than diversion. They provided some insight around their own frustrations around wanting to progress in a department that valued punitive responses and prosecution over diversion and treatment. Given the structural problems within the DA around career advancement, it was my sense that the critiques of the DAs that work for that program were around being able to advance their careers while also diverting folks into diversion programs.”

Rose Cahn, Senior Staff Attorney at the Immigrant Legal Resource Center and Director of the Immigrant Post-Conviction Relief Project, described how current policies of the L.A. DA’s office exclude immigrants from participating in diversion programs. “The point of diversion is to get people the treatment services and support they need so that we don’t end up in the future with the exact same person charged again for the exact same offense. Federal immigration laws consider someone to be convicted of an offense if two things happen: 1) there’s an admission of guilt and 2) there’s some form of penalty, fine, or restraint placed on that individual.

When a diversion program requires an admission of guilt for the person to participate, then regardless of whether it's later dismissed from their record, under federal immigration law, it's still a conviction for immigration purposes, and can be grounds for deportation. This has the result of creating an invisible barrier that keeps immigrants from

participating in diversion programming, because they know that if they participate, instead of getting a path to treatment and a clean slate, at the end of their programming, they actually will face deportation.”

PRE-FILING DIVERSION PROGRAM:

None of the individuals interviewed for this report spoke of anyone who has been served by the Pre-filing Diversion Program. Ivette Alé said, “The fact that it's the PDP not widely known and used, to my knowledge, speaks volumes to how effective it is. I mean, I've heard of it, but I haven't heard of it being used. I don't know any community members that have said, ‘yes, this program saved me from being in jail.’ I haven't heard any of those stories, whereas ODR has supported a lot of community members.”

Alé also noted that in their work on the L.A. County Alternatives to Incarceration Workgroup, “The office of the DA was one of the most resistant departments to implementing more progressive pretrial reform models. We were able to get a very progressive pretrial model passed and included in the reports... but during the drafting of it, it was the DAs over and over again that were undermining the presumption of release, for most accused people, which is something that communities have been fighting for not just here in LA, but across the state.”

MENTAL HEALTH DIVERSION

People interviewed for this report universally said that, despite the L.A. DA's vocal championship of Mental Health Diversion, the reality in practice is that L.A. prosecutors almost always object to requests for diversion and too often, judges defer to those objections, and side with the prosecution, preventing people from receiving the services associated with diversion programs. All of the public defenders interviewed for this report expressed exhaustion when they spoke about diversion, as if it was a long battle they did not expect to win. Thomas Gonzalez, a public defender with misdemeanor experience, noted that, despite the availability of diversion programs for low-level charges, “I still get school fights on my caseload of charges the DA is prosecuting instead of diverting. I still get petty theft. I still get shoplifting charges. So I hear they are diverting something, I don't really know exactly what though.” Yehudah Pryce interacts on a daily basis with people who have been incarcerated through his work as a psychotherapist and his work surveying people recently released from incarceration regarding their experiences with the LA DA's office for Turning Points Returning

Citizens Stimulus program. In an interview for this report, he stated, “Mental health diversion is not something the community is aware of. It's not something that has affected their lives. So whatever policy exists it still feels like ‘us against them’, rather than a system where diversion is being used to help the community.”

Public defender Nikhil Ramnaney said that in his experience, the DA always requests the most restrictive Mental Health Diversion options, regardless of the needs of the individual in question. Because of constraints in these programs, this ends up preventing the people who actually need those more intensive programs from receiving those services, and these requests often contradict what mental health experts are recommending. This aligns with the experience of Elisabeth Smith, who noted that the deputy DAs within the Mental Health Unit for the West Region have demonstrated a lack of understanding of diversion. Personnel decisions like this demonstrate deep flaws in the L.A. DA's office Mental Health Diversion plan.



Public defenders note that obtaining Mental Health Diversion is extraordinarily burdensome. Because of that, for their clients charged with minor crimes and misdemeanors, they frequently use other workarounds, or work to get charges dismissed entirely. They often forgo pursuing diversion because of the amount of work required to put together a good request, and the frequency with which the DA's office objects to it. They rarely look to Mental Health Diversion as a vehicle for relief for their misdemeanor clients because of how often L.A. prosecutors object and the frequency with which judges side with those objections. And Pryce's experience aligns with this. He said, "People often don't get asked by the DA's office, or often even their public defender, about their mental health status or questions that would assess the appropriateness of Mental Health Diversion. When they do, they are often not made fully aware of the implications of these questions. As such, the current system does a disservice to those Jackie Lacey claims to be considerate of."

Smith recounted the story of a client who, when arrested on a felony driving charge, was observed by officers to be exhibiting unusual behaviors. It seemed evident that it was a mental health issue. A judge, after reviewing the case and her client's criminal and mental health history, sent the case to the ODR court, recommending a diversion program that included treatment in a residential facility, mandatory compliance with a medication

regime, and counseling, all while on probation. Smith's client was screened and accepted by the Office of Diversion and Reentry.

However, several years prior, Smith's client had pled guilty to some serious charges (all of which occurred on a single day, indicating a mental health break) and he had served his sentence. Therefore, despite the recommendation of the previous judge and the ODR staff, the DA at the ODR court objected to the diversion plan, and the judge there stated that she planned to sentence Smith's client to three years. Since her client had been referred to the ODR court specifically for the purpose of developing a diversion plan, Smith argued that his case should be heard in the court it was originally referred to, not sentenced in a court that was supposed to provide diversion for him.

Back at his original court, the judge put Smith's client on probation, rather than incarcerating him. However, by objecting to the recommendation for diversion at the ODR court, the DA denied him potentially vital mental health services that could help ensure he develops a plan to stay on his medications and prevent another bad day. Smith told me, "the DAs are short-sighted. They're not thinking long term about what's best for the individual and society. Is it because he's not worthy of being helped because he was accused of a crime? What's 18 months in jail going to do for someone with a mental health condition?" She continues, "In either scenario, ODR vs what he got, he is in the community. But, had ODR not been objected to, he would have these court-ordered mental health services and he would be monitored by an ODR court. Even if the DA got their way and he got jail time, what about after? What if jail exacerbated his mental health rather than treated it. After his term, would he be safely returned to the community? Maybe but I'm not sure why they view treatment as giving someone a break vs. jail time instead of a good outcome for everyone."

OTHER DIVERSION

Public defender Meredith Gallen works frequently with survivors of sex trafficking, defending them against allegations of prostitution and related charges. She described that the diversion program offered to many of her clients is “one-size-fits-all” and does not address her individual clients’ specific needs. Participants are required to attend eight sessions at the diversion program in central L.A.(the location of which prevents many of her clients from being able to attend) and stay away from the sex trafficking corridor in the Long Beach Boulevard area (which may be where they live, or the only place in L.A.they know). With regard to the lack of flexibility in program requirements, Gallen stated, “It’s in absolute disregard to the fact that the person being trafficked is the real concern. The DAs are just interested in getting their convictions on those cases.”

Public defenders also mentioned fees as a barrier to diversion for many of their clients. Many diversion programs must be paid for by the participants, essentially allowing individuals to pay their way out of incarceration and into diversion, and denying poor individuals from access to the benefits of those programs. Gallen mentioned that because so many diversion programs have so many costs associated with them, individuals with every intention and desire to complete them are unable to finish. Often, the programs are then converted to incarceration time, resulting in people who both complete much of a diversion program and still have to serve time behind bars.

Many of the fines and fees associated with charges are discretionary, and research shows that these charges cost more to taxpayers to collect than they recoup from the charge itself.⁹² Despite this, DAs frequently push judges hard for these charges to be imposed. While L.A.County eliminated all criminal administrative fees,⁹³ individuals still must pay a variety of fees, including state fees and fees charged by the program providers themselves. Nikhil Ramnaney, president of AFSCME Local 148, L.A.County Public Defenders Union, stated, “If Jackie Lacey actually cared about rehabilitative programming, she’d advocate for free and direct access to the programming available.”

The people interviewed for this report also mentioned that the L.A. DA’s office is set up to prevent individual prosecutors from being held accountable. Deputies have a list of offers that have been approved by their supervisor, and cannot deviate from those without going back to their supervisor for approval. When public defenders ask for a plea that includes diversion, but is not what the prosecutor has in their list of offers, the prosecutor has to ask their supervisor (who likely has very limited knowledge about the case). If they return with a denial of that request, they pass the buck by blaming their supervisor.

Recommendations

- Collect data regarding diversion and release it publicly
- Prioritize decriminalization and systemic changes over diversion
- Eliminate money-based barriers to diversion
- Make all diversion offers pre-plea, and not require an admission of guilt
- Move all diversion to community-based programs
- Incentivize diversion over prosecution

COLLECT DATA REGARDING DIVERSION AND RELEASE IT PUBLICLY

The L.A. DA's office replied to the PRA sent by the ACLU of Northern California stating that "As of January 2019, the L.A. DA's Office has been keeping informal, manual records of cases going into the ODR court, but we kept no records before 2019," and, "The L.A. DA's office keeps informal, manual statistics on which defendants request mental health diversion [pursuant to AB 1810], but that started in 2019." Furthermore, despite the PRA specifically asking for all documents and records related to all diversion programs, and the Legal Policy Manual specifying the existence of a Pre-Filing Diversion Program Manual and monthly reports generated from the PDP database, none of those documents were provided. Either the L.A. DA's office is not actually keeping those records, they failed to competently and appropriately respond to the ACLU's PRA request, or they violated the law in order to withhold this information.

It is clear that the L.A. DA's office needs to more formally track statistics related to diversion. Because some diversion occurs prior to filing charges, the dataset provided to us, which shows that the L.A. DA's office only diverts 0.7% of charges on the ACLU's "Decline to charge / pre-plea diversion" list, likely under-estimates the frequency with which the L.A. DA's office utilizes diversion. Without formal data-tracking procedures for diversion, we can only use the

limited data we have in order to evaluate the L.A. DA's use of diversion. And that evaluation (a diversion rate of only 0.7% for charges on the ACLU's "Decline to charge / pre-plea diversion" list) is abysmal.

In order to demonstrate to the public the office's diversion efforts, for all diversion programs the L.A. DA should, at a minimum, track:

1. Referrals, including demographic information and charges
2. Denials for referred individuals, including reasons for denial
3. Eligible individuals who were not referred to diversion, and reasons they were not referred
4. Diversion program successful completions
5. Individuals who fail to abide by the terms of diversion programs, and a description of the noncompliance

All of the above should be disaggregated at least by race, if not also by other relevant demographic and case information.

This aggregated information should be publicly available in order to demonstrate to the public whether or not the L.A. DA's office is utilizing diversion programs.

PRIORITIZE DECRIMINALIZATION AND SYSTEMIC CHANGES OVER DIVERSION

Three of the six programs for which the Los Angeles DA's office provided utilization estimates appear to be drug courts (L.A. County Drug Court, Co-Occurring Disorders Court, Sentenced Offender Drug Court). While diversion in general is preferable to incarceration, drug courts specifically are problematic for a number of reasons. The Drug Policy Alliance analyzed research and received input from academics and experts in the area and revealed that drug courts: 1) have not demonstrated cost savings, reduced incarceration, or improved public safety, 2) leave many people worse off than traditional prosecution, and 3) have made the criminal justice system more punitive toward addiction – not less.⁹⁴ Therefore, rather than continue the criminalization of individuals with substance use disorders through drug courts, the L.A. DA's office should work to decriminalize drug use, and support public health systems that more effectively address problematic drug use.

Public defenders noted that mental health, sex trafficking, and drug diversion programs lacked the flexibility necessary to fit the needs of many of their clients. Diversion programs should ensure a “one-size-fits-all” approach does not hamper their ability to serve participants' unique needs. That said, in order to determine if a program is effective, it is imperative that it collect data on its participants, on the program itself, and on completion and failure rates and reasons.

One major flaw apparent in the PDP is the program requirement that participants pay restitution, and potentially other fees, as a requirement for successful completion. This unfairly prohibits individuals who lack the ability to pay the opportunity to participate in programs that may benefit them and society as a whole more than criminal proceedings would. Because fees associated with the criminal-legal system are counterproductive and racially biased,⁹⁵ all monetary sanctions or fees associated with any diversion program should be eliminated.

MAKE ALL DIVERSION OFFERS PRE-PLEA, AND NOT REQUIRE AN ADMISSION OF GUILT

Another barrier to diversion comes from the common requirement that in order to be offered diversion, an individual enter a guilty plea. The purpose of diversion is to provide services to people in order to help prevent them from being in a situation where they are accused of another crime. However, for many immigrants, an admission of guilt, even if it is dismissed from

their record, can still be grounds for deportation on a federal level. Knowing that accepting a diversion plea could result in their deportation prevents many people from accessing these vital services. Making all diversion programs available pre-plea, and without requiring an admission of guilt, will provide wider access to these services.

MOVE ALL DIVERSION TO COMMUNITY-BASED PROGRAMS

Diversion programs should not be run by the District Attorney's office, or within the criminal-legal system in any way, including through the Probation Department. Diversion programs exist to reduce the harms people experience through interaction with the criminal-legal system, so housing them within that system is in direct opposition to that goal. Therefore the DA's office should transition any programs they currently run to community-based programs. However, the DA

is involved in diversion programs through getting people diverted, so the following recommendations address improvements for that process.

INCENTIVIZE DIVERSION OVER PROSECUTION

Currently, there appears to be no incentive for prosecutors to refer individuals to the PDP or any other diversion program, and individual women in the DA's office corroborate this. According to a RAND Corporation study commissioned by the L.A. County Board of Supervisors,⁹⁶ 30% of the entire average daily jail population in 2018 were in mental health housing units and/or prescribed psychotropic medications. This represents 5,111 individuals on any given day. The study concluded that **61% of those people (over 3,000 people on any given day) would be legally suitable and clinically eligible for community-based treatment programs, yet remain incarcerated.**

Given the huge numbers of individuals who are incarcerated, and who would be better served through diversion, diversion programs should have criteria by which individuals are automatically tracked into diversion. Additionally, there should also be staff assigned to each program whose responsibility it is to screen cases referred to the L.A. DA's office for eligibility for diversion. Eligible individuals should then be offered those diversion programs, and the District Attorney's office should not be involved in the eligibility process. DAs should be rewarded, promoted and otherwise incentivised to pursue diversion and alternatives and avoid incarceration.

The Los Angeles County Alternatives to Incarceration Work Group ATI Road Map has a series of recommendations for improving diversion efforts in Los Angeles County which includes increased transparency in the diversion process⁹⁷, offering a much clearer sense of what programs are available to who and how they are accessed, as the current landscape is quite opaque.

Public defenders spoke of a lack of mechanism for mental health experts to have any direct influence in determining recommendations for Mental Health Diversion. The L.A. DA's office should implement a protocol to defer to the judgement of mental health professionals when they provide testimony regarding appropriate treatment and alternatives to incarceration.

According to the data provided by the L.A. DA's office, less than 1% of all charges filed are diverted and less than 1% of individuals prosecuted by the L.A. DA's office have even one charge diverted. The office has created diversion programs to help people exit the cycle of the criminal-legal system⁹⁸, so it should *utilize* these programs, reducing the caseloads on deputy DAs, and, in DA Lacey's own words "ultimately lowering recidivism rates through rehabilitative services rather than incarceration and saving taxpayer money."⁹⁹ Furthermore, diversion should divert people out of the criminal-legal system, rather than place them in another part of it. All diversion programs should be run outside of the legal system and its actors, and could instead be housed in community or public health institutions.

Parole

L.A. DA Policies

The decision of whether an individual is found suitable for and granted parole is made by the Board of Parole Hearings. However, the District Attorney's office often takes a position either supporting or opposing parole, which influences whether or not parole is granted. The PRA sent by the ACLU of Northern California requested, "All records relating to how many parole hearings the office attended, how many hearings your office opposed, and how many parole hearings your office opposed when the next of kin took no position in the calendar years of 2017 and 2018." The L.A. DA's office responded that they attended 2,983 parole hearings in those two years, but was unable to report how many parole hearings their office opposed, nor the outcomes of those hearings. While the L.A. DA's office provided no other data regarding their parole hearing participation, the statewide parole grant rate was 17% in 2017 and 22% in 2018.¹⁰⁰

Personal & Professional Perspectives

The Los Angeles DA's office did not provide any data on their recommendations supporting or opposing parole, but individuals who have firsthand experience with parole hearings, and who have spoken with countless individuals who have gone before the Board of Parole Hearings, shared their experiences for this report. Yehudah Pryce describes the assistant district attorney at his parole board hearing as being someone "who had no parameters as to what the DA would accept as qualifying me as suitable to live in the community. The DA was working against the supposed stewards of community justice. After the parole board commissioner overruled the DA's objections and I earned my parole, I taught others on how to fight an uphill battle against this supposed justice system.

While Pryce's experience was with the Orange County DA's office, most of the people he encountered during his 16-year incarceration were from Los Angeles County, "and every single L.A. County citizen I met while incarcerated encountered the same sort of experience from the Los Angeles DA's office."

He continued, "No matter how good you do in prison... I didn't get into any trouble, got degrees, etc. They always send a district attorney from every county to argue against paroling somebody... No matter what the crime is, they send a district attorney to whatever prison they're in to argue against releasing them. I've never heard of a case (and I'm sure there's one or two, but I've just never heard of them) where a DA says, 'This person deserves to get out. We don't have a problem for them to get out now....'

The people I'm telling you about are people involved in a lot of self help groups: teaching them, designing the programs in prison, the clerks, and program facilitators of the college programs. So these are all model inmates and nobody I know of no story, of anybody ever heard where a district attorney did not oppose parole."

Michael Saavedra, the Legal Coordinator & Youth Mentor at the L.A. Youth Justice Coalition and Community Organizer with Dignity and Power Now, shared his experience: "I haven't looked at the actual statistics, but just in my experience as a legal coordinator and helping folks prepare for parole hearings at least, I would say 80% of the time, L.A. prosecutors oppose parole."

Douglas Jessop, who was a prison law clerk during the three years he was unlawfully incarcerated after a wrongful conviction by the Orange County DA's office, shared what he thought about the district attorney's involvement in parole: "As far as parole I just know the district attorney has way too much power. They could shut down your whole life, whatever's going on with you. They can shut all of that down. I think they just have too much power, and then you can't hold them accountable." Pryce agreed, stating, "I don't think the DA's office should play a role in parole hearings whatsoever. I don't understand why they would play a role. They're not overseeing the parole process. They know about the original crime, which everybody knows about but they shouldn't have a say in parole suitability."



"I haven't looked at the actual statistics, but just in my experience as a legal coordinator and helping folks prepare for parole hearings at least, I would say 80% of the time, L.A. prosecutors oppose parole."

MICHAEL SAAVEDRA

"I don't think the DA's office should play a role in parole hearings whatsoever. I don't understand why they would play a role. They're not overseeing the parole process. They know about the original crime, which everybody knows about but they shouldn't have a say in parole suitability."



DOUGLAS JESSOP

Recommendations

- ❑ Stop making recommendations regarding parole suitability
- ❑ Collect data regarding parole hearing participation

STOP MAKING RECOMMENDATIONS REGARDING PAROLE SUITABILITY

Brooklyn District Attorney Eric Gonzalez has stated, “For too long, prosecutors across the country have automatically and reflexively opposed release when individuals become eligible for parole.”¹⁰¹ Without data on what charges, cases, and people the DA supports and opposes for parole, it is impossible to evaluate the office’s commitment to decarceration by agreeing to the release of incarcerated people who come before the parole board.

More importantly, once people are convicted and have served their time, the District Attorney

should have no role or say in whether an incarcerated individual has been rehabilitated and should be granted their freedom. That decision is given to the Board of Parole Hearings as stipulated in PC 3041(b)(1), and provides that parole should be granted unless public safety requires further incarceration. This decision should not need to involve the District Attorney’s office, whose role it is to prove the original case, not determine if an individual is suitable for parole. Therefore, the L.A. DA office should institute a policy to completely discontinue its involvement in parole hearings.

COLLECT DATA REGARDING PAROLE HEARING PARTICIPATION

If the DA’s office chooses to remain involved in parole hearings, it is paramount that the office begin collecting data on parole hearing participation, including demographic information about the incarcerated individual, the DA’s recommendation, the reasons for that recommendation, and the board’s eventual decision regarding parole suitability. All of this data should be made publicly available on the DA’s website, both in visualizations created and published by the DA’s office and as raw data available for download by interested parties.

Although the Public Records Act Request sent by the ACLU of Northern California asked for “Copies of all office policies, including but not limited to Brady compliance policy, charging and plea deal offer policies, pardons and commutations, etc.” no policies regarding parole were provided

so an analysis of current policies is not possible. However, the District Attorney’s office should remain entirely out of parole hearings. The Board of Parole Hearings is charged with determining suitability for parole, and that entity should make that determination free from the influence of the office whose role it is to convict the individual in the first place. For youth who committed their charges before the age of 26 (and therefore may be eligible for a Youth Offender Parole Hearing¹⁰²) and who received indeterminate life sentences, the DA’s office should regularly review their cases and recall their sentences appropriately. If policies do not already exist with regard to parole, the above recommendations should be included in the Legal Policy Manual and provided during line deputy training.

Immigration

“Frequently immigration is conceived of as a purely federal matter. But what people are less familiar with is that it is really the local DA’s charging, plea bargaining, and post-conviction practices that determine which immigrants of those who are already in this country end up getting deported.”

ROSE CAHN, Senior Staff Attorney, Immigrant Legal Resource Center

Los Angeles County is home to over 3.4 million immigrants, who make up over a third of the county’s residents.¹⁰³ Given that criminal courts have increasingly become the stepping stones to federal immigration enforcement, and that in many ways the District Attorney’s office is the gatekeeper to the courts, the Los Angeles District Attorney’s office has enormous responsibilities in relationship to keeping the L.A. community intact.

L.A. DA Policies

Motion to vacate judgement in cases where the defendant did not understand immigration consequences (PC 1473.7)

Certain criminal convictions can result in immigrants being placed in removal proceedings and deported, separating them from their family and life in the United States.¹⁰⁴ Therefore, criminal defense counsel are legally obligated to advise noncitizens of potential immigration consequences of convictions, and are required to plea bargain for an immigration-safe criminal disposition.^{105,106} California Penal Code 1473.7 allows an individual to vacate a past conviction if that conviction could subject them to adverse immigration consequences (such as deportation or ineligibility for citizenship) and they failed to meaningfully understand, knowingly accept, or defend against those immigration consequences during their trial.¹⁰⁷

When PC 1473.7 went into effect on January 1, 2017, the L.A. DA’s office took the stance that such motions were inappropriate unless the individual in question had actually received a notice of removal proceedings or a final removal order from federal authorities. However, after advocacy by the Immigrant Legal Resource Center and others, the L.A. DA’s office updated its policy via Special Directive 18-04 to apply regardless of whether notice of removal proceedings had been sent.¹⁰⁸ This improvement to the policy allows individuals to take a proactive, rather than defensive stance toward their ability to stay united with their family, community, and the country that for many is the only place they have ever called home.

The statute was amended four months later to clarify that the stance the L.A. DA's office eventually took was the intent of the law,¹⁰⁹ so it is promising that the L.A. DA's office took a proactive measure to ensure individuals' rights were upheld even in the face of uncertainty around the statute.

The PRA sent by the ACLU of Northern California requested "Records that refer to office efforts to implement its obligations under penal code 1473.7" to which the L.A. DA's office provided three Special Directives: 17-09, 18-04, and 18-11. Special Directives 17-09 and 18-11 are particularly noteworthy for the instructions given to deputies regarding objections with regard to PC 1473.7 hearings. While PC 1473.7 provides that, "Upon the request of the moving party, the court may hold the hearing without the personal presence of the moving party provided that it finds good cause as to why the moving party cannot be

present," Special Directives 17-09 and 18-11 order that, "Deputies shall object to a moving party's absence from the Penal Code § 1473.7 hearing." This blanket-objection without consideration for the unique facts of the circumstance does nothing to further the pursuit of justice and needlessly obstructs the process. The Special Directives also order that deputies object to admission of hearsay evidence, that deputies must insist on cross-examination of hearsay declarants, and that deputies must object to plea withdrawals which do not take place in open court. These directives help uphold convictions without taking into consideration the individual circumstances of each case. Furthermore, the L.A. DA's office provided no policies that establish an affirmative procedure for reviewing the claims of the movant and abstaining from fighting clear violations of Penal Code 1473.7.

Avoidance of adverse immigration consequences (PC 1016.3(b))

California Penal Code 1016.3(b) requires that the prosecution "consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution." In response to the PRA requesting "records that refer to office efforts to implement its obligations under penal code 1016.3(b)," the L.A. DA's office reported that they have no responsive documents. Furthermore, the office found that all "Records, memoranda, and emails that relate to the creation and development of an immigration policy for the office" were exempt from disclosure based on the fact that they contain attorney work product, are records where the facts of the particular case dictate that the public interest served by not disclosing the record

clearly outweighs the public interest served by disclosure of the record, and/or that disclosure of the records was a burdensome request. In spite of this, the L.A. DA's Legal Policy Manual sections 10.12.01 (misdemeanors) and 12.13.01 (felonies) instruct deputies to consider the avoidance of adverse immigration consequences as one factor in reaching a just resolution of a case at all times when engaged in the plea negotiation process. Both sections demand that approval by the Head Deputy or Deputy-in-Charge be obtained prior to any deviation from case settlement policy due to consideration of immigration consequences, and require documentation of the proposed disposition.

Personal & Professional Perspectives

Public defender Meredith Gallen has had a positive experience with prosecutors in the Compton court, where she has worked for the last three years. She stated, “There’s a willingness to work with us when it comes to low-level cases and drug cases. Usually the goal would be to resolve it informally so that the person never has to enter a plea.” In cases where she has to negotiate a plea, she has found that prosecutors are generally willing to work with her and her colleagues to find an immigration-neutral charge.

However, Elisabeth Smith, who has worked in courts across the county, has had a very different experience. She stated that despite the prosecution’s legal obligation to “consider the avoidance of adverse immigration consequences in the plea negotiation process as one factor in an effort to reach a just resolution” as required under PC 1016.3(b), “Generally when I bring up my clients’ immigration status... it’s been a negative thing in the eyes of the prosecutor. I don’t find that I’ve ever had good results by telling a prosecutor about my client’s immigration status. I try to get the immigration friendly plea without telling them.” In her experience, prosecutors have never accepted an immigration-neutral offer when she has offered it as an alternative plea for a client facing immigration-related consequences to the charges presented. Rose Cahn, Senior Staff Attorney at the Immigrant Legal Resource Center, put it more bluntly: “Lacey has time and again, been out of touch with the needs of the immigrant community.”

Cahn further illuminated the discrepancy in Smith and Gallen’s experiences: “The lack of coherent, centralized, and enforced policies and directive creates a tremendous lack of uniformity across the very large L.A.County. And that lack of uniformity is troubling because there are so few checks and balances. So when you know that you’re getting a result that you wouldn’t have gotten in a different courthouse, there’s no clear way to bring it up the chain. There’s no one who’s centrally accountable, who creates that accountability within the office.”

Ivette Alé spoke from personal experience about

the consequences of prosecutors refusing to find an immigration-neutral charge: “In terms of the impact on my family, we were undocumented at the time when my parent was incarcerated and that resulted in not having access to services. While our primary breadwinner was incarcerated, it led to my family being houseless, and, like I said, not given access to a lot of resources, not given trauma support. So the incarceration of my loved one severely affected all of us. And being undocumented opened us up to danger of deportation. That, coupled with houselessness, we were being more exposed to the system. So when we’re thinking about pretrial services, being able to see pretrial services as encompassing support for the family, not just the individual that is accused, is of utmost importance.”

Alé continued, “Even when you’re not undocumented, even just being a green card holder, being charged with certain offenses opens you up for deportation and can preclude you from accessing citizenship in the future. And so when we think about how the DAs here in Los Angeles upcharge, and have used gang databases to file more serious charges, that disproportionately affects undocumented people and green card holders. Also simply being incarcerated pre-trial opens up the risk of contact with ICE.”

Cahn, who is Director of the Immigrant Legal Resource Center’s Immigrant Post-Conviction Relief Project, expressed concern around the ability of immigrants in Los Angeles county to obtain post-conviction relief from adverse immigration consequences to old charges. “These are individuals who have already been convicted, already served their time, already completed parole and probation, and are now looking to figure out how to overcome that final barrier to reentry, which is the deportation consequences.” She continued:

“In recognition of both the critical significance (even outside of immigration consequences) that can be associated with low-level offenses as well as DAs’ legal mandate to consider immigration consequences, many DA offices across California have created policies that streamline access to post conviction relief for immigrants who need it. What that looks like in many counties is that the DA appoints a person who is in charge of post-conviction motions, who develops the familiarity with those immigration neutral, offenses and immigration-damaging offenses. Advocates and sometimes even the PDs themselves can then come forward and flag cases that need this crucial type of relief. In some counties, they have even worked out a consent calendar with the superior court where one day a month those post-conviction cases are heard and processed and the DAs put forward their list of cases where they stipulate to these motions so that it can be essentially an administrative proceeding, not a fully litigated proceeding with expert witnesses.

The L.A. DA, however, has not created any streamlined process, such as the ones that I described. With the lack of centralized leadership in the L.A. DA’s office, and hundreds of prosecutors representing the office across the county, you could face 800 different responses to the exact same case. In some cases, the DA is very amenable, while in other cases with the exact same charge and exact same equities, you get staunch opposition: you are required to take the case to trial, to call expert testimony, etc. So there’s an immense lack of uniformity as well as just a lack of direction from on high about what the procedural posture is, what the policy directive is when dealing with these cases.”

ROSE CAHN

Alé described some of the steps their community has proposed in order to begin reducing the harms that the Los Angeles District Attorney’s office imposes on people they prosecute: “One of the things that we’re pushing here in Los Angeles is for a permanent policy amendment that would prohibit ICE transfers, to be able to protect folks, especially in this moment of COVID-19 when a lot of folks are actually spending longer in jail, because there’s fewer treatment facilities and diversion programs because of COVID, and also because of the extensions on getting a courtroom date.”

Cahn summarized the Immigrant Legal Resource Center’s relationship with the L.A. DA’s office: “We have submitted Amicus briefs, on key immigration-related policy issues on behalf of DAs across the state, but Lacey has never signed on. There’s been multiple opportunities, both at the state, and federal level to proactively demonstrate a policy that prioritizes the needs of immigrants, and her office has frankly never been a partner in that. I think the question moving forward is: are they going to be an office that stands up for the rights of immigrants affirmatively? Or will they continue to be an office that erects procedural hurdles and then additional administrative costs on non-citizen defendants and their community?”

Recommendations

- ❑ Ensure immigration-related consequences are considered in the plea process
 - ❑ Always use immigration-safe charges
- Streamline access to post-conviction relief to help erase the ongoing immigration impact of old convictions

ENSURE IMMIGRATION-RELATED CONSEQUENCES ARE CONSIDERED IN THE PLEA PROCESS

Based on the mixed experience of L.A. public defenders and the fact that no current guidelines or training exists regarding the legal requirement that prosecutors must consider immigration consequences when negotiating pleas, the Los

Angeles District Attorney's office needs to develop standard guidelines and training to ensure deputies consider the added and unjust consequences associated with convictions for immigrants.

ALWAYS USE IMMIGRATION-SAFE CHARGES

Those guidelines should instruct deputies to always use immigration-safe charges that are consistent with the facts of the case when people face potential immigration-related consequences. Without clear training and guidelines around this legal requirement, people will continue to face different experiences depending on where they are being prosecuted. The status quo causes immigrants to potentially face the extremely harsh punishment of deportation, on top of the penalty assigned by law to a given charge. Immigration consequences are added and disproportionate punishment faced by non-citizen community members and every attempt must be made to avoid them. District attorneys should be required to write a memo to their supervisor that describes any adverse immigration and collateral consequences when making policy and negotiation decisions in charging, pre-plea, plea, and post-conviction contexts.

As written, the District Attorney's office directives regarding objections in PC 1473.7 hearings (Special Directives 17-09 and 18-11) do nothing to promote justice and instead, increase the work and time involved in these hearings. To direct deputies to object in every case is obstructive and antithetical to the letter and spirit of the law. The L.A. District Attorney should issue revised guidance that seeks to avoid immigration consequences at every opportunity possible and should establish a procedure for reviewing the claims of the movant and abstaining from fighting clear violations of Penal Code 1473.7. Instead of fighting those violations, the office should support post-conviction litigation from individuals who were not advised of immigration or collateral consequences before pleading guilty.

STREAMLINE ACCESS TO POST-CONVICTION RELIEF

Current access to post-conviction relief for immigrants in L.A. County is determined more by the courthouse and the deputy district attorney than by the merits of a particular case. The L.A. District Attorney should create a clear and transparent policy for post-conviction relief motions, including those raised under PC 1473.7, and an office point person should be assigned to

review post-conviction motions and to enforce consistent application of the policy. This point person could be available to respond to concerns raised by impacted individuals and their attorneys who are seeking to vacate old convictions or sentences to mitigate or eliminate immigration consequences.

COVID-19 Response

District Attorneys and COVID-19

Jails and prisons are rarely set up to allow for 6 feet of space between incarcerated individuals, and overcrowding in California jails and prisons means that incarcerated people are frequently in very close quarters, share sinks, showers, and toilets, and have poor access to medical care. As governments announced stay-at-home and social distancing orders, the COVID-19 pandemic presented a horrifying situation to incarcerated people in the United States. Toni Preckwinkle, the Cook County, IL Board president stated, “Jails in this country are petri dishes. It’s very difficult in a jail to maintain social distancing.”¹¹⁰ The result is “a real disaster waiting to happen. These are places that are particularly susceptible to contagion,” according to David Patton, the executive director of the nonprofit Federal Defenders of New York.¹¹¹ A group of three medical and prison health professionals wrote on March 17, 2020 that, “Unless government officials act now, the novel coronavirus will spread rapidly in our jails and prisons.”¹¹²

The vast majority of cases are resolved through plea bargaining, and therefore give prosecutors much control over sentences. However, even the small percentage of cases that go to trial, where prosecutors don’t technically determine sentencing, the recommendations they make to judges have significant influence in who is incarcerated and who can be released. The Brennan Center for Justice¹¹³, The Justice Collaborative¹¹⁴, the National District Attorneys Association¹¹⁵, and experts from all across the country and world have issued guidelines

for ways that prosecutors can help maintain the health and safety of those who are justice system-involved as well as the greater community. A large focus has been on reducing the jail and prison population, and keeping people out of criminal proceedings. Almost all agree that pretrial detention should be reduced or eliminated entirely, and that maintaining the right to a speedy trial remains imperative. Many advocates have pushed DAs to decline to initiate criminal charges that do not implicate public safety, reduce as many charges as possible, direct failures to comply with quarantine orders to the civil, rather than criminal system, and recommend the release of people charged with nonviolent charges from custody without bail, among many others.¹¹⁶

In Los Angeles County, on March 27, 2020, a zero-dollar bail requirement was set for most misdemeanors and low-level felonies,¹¹⁷ and on April 6, the Judicial Council of California adopted a statewide emergency bail schedule that set bail at \$0 for most misdemeanor and lower-level felony charges.¹¹⁸

The L.A. DA's Response

The Los Angeles DA's office stated that "in a March 14, [2020] email to all employees, District Attorney Lacey directed her deputy district attorneys to consider whether a defendant is considered by health officials to be at a high risk of exposure to coronavirus as a factor in either setting bail or agreeing to a defendant's release on his or her own recognizance."¹¹⁹

On March 16, 2020 she instructed her managers "to delay the filing of new cases and re-evaluate pretrial cases to allow nonviolent offenders who do not pose a danger to the community to remain outside the criminal justice system." She instructed them to use both the pending charges and the individual's criminal history to determine their risk.¹²⁰

In a March 20, 2020 news release from the L.A. DA's office, the DA's Assistant Media Chief Greg Risling announced the above measures, as well as other steps she had taken "to reduce the number of people both in local jails and courthouses as part of her office's response to help curb the spread of the coronavirus."¹²¹ The release states that DA Lacey worked with the Sheriff, Public Defender, and Alternate Public Defender to review ~2,000 cases involving in-custody individuals to determine if they could be safely released, and instructed her deputy district attorneys "to not request that defendants be remanded on probation or parole violations on nonviolent and non-serious crimes unless the defendant has demonstrated that he or she is a danger to the community." It also announced that she had directed Head Deputy District Attorneys to expand the use of the Pre-filing Diversion Program.

Troubling, however, was the announcement, in the March 20, 2020 news release, that DA Lacey had recommended that deputy district attorneys allow law enforcement officers to testify to witness statements "in an effort to reduce the number of civilian witnesses having to appear in courthouses during the pandemic"¹²². While, of course, reducing the number of civilian witnesses having to appear in person is vital for the health and safety of the entire community, allowing law enforcement officers to testify to other individuals' statements is clearly problematic given the history of police manufacturing evidence.¹²³

After the L.A. county \$0 bail schedule was set, the Huffington Post received emails sent by Gina Satriano, a director in the District Attorney's office, instructing deputy DAs regarding how they could use the old bail schedule in spite of the \$0 bail schedule stipulated by Los Angeles County.¹²⁴ While the DA's office defended the email by stating that it was an exercise in determining the outcome of an unlikely hypothetical situation, it is just as easily interpreted as instructions as to how to circumvent rules designed to keep individuals accused of crimes and the community healthy and safe.

Furthermore, an internal email sent just 12 days later, on April 14, this time by Deputy District Attorney Michael Fern, demonstrates that prosecutors in the L.A. DA's office continued attempting to circumvent the \$0 bail schedule. One of the charges exempted from the \$0 bail schedule is looting, and Fern described that in grand theft cases where the value of the stolen goods exceeds \$950, prosecutors can file looting (PC 463) charges even if the incident lacks any of the typical characteristics of looting. He noted, "For fraud/theft cases where the defendant is currently in custody, we have a couple arguments to obtain appropriate amount of bail... A violation of PC 463 does not require any proof of a nexus between the theft and the emergency."¹²⁵

Personal & Professional Perspectives

Many of District Attorney Lacey's public announcements point toward a humane, aggressive strategy to ensure the health and safety of those accused of crimes, convicted of crimes, and the general public. However, as noted above, actual implementation appears to have been undermined by her staff. Nikhil Ramnaney, President of the L.A. Public Defender Union, pointed out that because the L.A. DA's office does not release any statistics about the Pre-filing Diversion Program, it is impossible to say whether the office actually expanded its use.

Public defenders also point to several troubling anecdotes regarding the implementation of these policies. One public defender revealed that as late as April 16, 20 days after the Los Angeles \$0 bail schedule was set, and ten days after the statewide adoption, a deputy district attorney successfully argued for \$100,000 bail to be set on an individual for a charge that was stipulated to be set at \$0. On Monday, April 20th, Chief Deputy District Attorney Joseph Esposito sent a memo with the subject line: "EMERGENCY BAIL SCHEDULE – ZERO BAIL IS NOT DISCRETIONARY."¹²⁶ Nevertheless, a public defender interviewed for this report, who needed to remain anonymous, stated that even after that email was sent, a DA argued that the bail schedule was discretionary and asked the judge to set bail on her client. Ramnaney stated "Jackie Lacey didn't put any of these policies into writing until there was pressure from the community. Then she announces these things, but there's no follow-through, there's no written enforcement mechanism. And we see that they're not happening."

Michael Saavedra, the Legal Coordinator & Youth Mentor at the L.A. Youth Justice Coalition and Community Organizer with Dignity and Power Now, stated, "If a person even has to go through the County jail for 10 hours and is being mixed with other prisoners and not being socially distanced from other prisoners, that's also a death penalty, a death sentence." He went on to describe what happens to many of his clients upon release: "people are released without any type of resources. And the DA's office has a lot of resources. And so often we have people who are homeless being picked up, being charged, and then released without

any type of resources. Some of these people have been tested positive for COVID, and so we as an organization, because these are some of our members, we have had to come out of pocket to pay for a two-week hotel stay for these people so that they can safely quarantine. That is something that is an extreme problem. If you're trying to stop the pandemic and you have those resources that the DA has, you need to use them."

Ivette Alé, the Senior Policy lead with Dignity and Power Now and lead organizer with the JusticeLACoalition, described other ways the DA's office undermined the \$0 bail order: "Under the emergency bail order in L.A. County, and the statewide order when it was in place, although the \$0 bail order allowed for a lot of folks with misdemeanors and low-level charges to be released on \$0 bail, there were a lot of loopholes and exceptions. And that disproportionately affected folks that were experiencing gang enhancements, because the even lower level charges would be upcharged due to the DA's use of gang enhancements. And so that's, that's another way that the DA has been really undermining \$0 bail orders, and looking for every loophole in order to incarcerate more folks."

Both Alé and Saavedra pointed out ways in which the L.A. DA's office failed the people of Los Angeles with regard to how she handled the Black Lives Matter protests in the wake of the murder of George Floyd in Minneapolis. Alé said, "One of the major pieces in this moment of not just COVID, but also all the Black Lives Matter uprisings, was that the Los Angeles emergency bail order created loopholes not just for getting around \$0 bail for folks with gang enhancements, but also for protestors. And so one of the loopholes is that \$0 bail is not applied for folks that are charged with looting and unlawful assembly. This was specifically targeting protestors. And so we saw that protestors, Black protestors in particular, were being charged bail right after the uprisings began. And then looting charges, which, in prior months weren't even making a blip in Los Angeles, suddenly started to spike. And this is before the uprising as well. So as soon as COVID hit, the beginning of looting charges started to rise here in Los Angeles."

Saavedra summed up the community reaction to all of this: “The DA has the power to prosecute or drop charges. During the Black Lives Matter movement, people were peacefully protesting and being arrested for breaking curfew. That was the only crime that they were charged with: for breaking curfew and then charging them with looting or charging them with these other ridiculous, trumped-

up charges just to keep them inside. I think that is very vindictive, it is very evil that you would send a person through the system and then say, ‘Oh, but we’re going to release the next day,’ knowing the COVID pandemic and knowing how contagious it is inside right now.”

Recommendations

- Continue COVID-related decarceration policies permanently and implement new ones
- Resolve personnel issues

CONTINUE COVID-RELATED DECARCERATION POLICIES PERMANENTLY AND IMPLEMENT NEW ONES

The COVID-19 pandemic has forced changes in the criminal-legal system and shows that decarceration is not only possible, but quickly and easily achieved. The L.A. County Jail population was reduced by 10%, releasing approximately 1,700 people in March¹²⁷, and by the end of April, almost 5,000 had been released.¹²⁸ The results of such decarceration will not be known immediately, but given the massive consequences of incarceration to those detained¹²⁹ (many of whom are incarcerated before a trial that eventually acquits them) and the evidence that incarceration and harsher punishments actually increase crime,¹³⁰ the L.A. DA’s office should work to actually implement many of the policies that the DA’s office announced in light of COVID-19.

At a minimum, it seems quite reasonable to continue to allow, in DA Lacey’s own words, “nonviolent offenders who do not pose a danger to the community to remain outside the criminal-

legal system.” Why the L.A. DA’s office has supported the criminalization of individuals who “do not pose a danger to the community” in the first place is a separate question, but it is important that the District Attorney’s office recognized the public health necessity of keeping incarcerated people, and the community safe and healthy during this pandemic by way of its decarceration efforts. The office should continue to find ways to ensure individuals who pose no threat to society are not incarcerated, particularly before proceedings that may establish their innocence. The L.A. DA’s office should follow through on announcements of the increased use of diversion programs in place of incarceration, in order to decrease the jail population and provide access to services that could help stabilize people’s lives and decrease recidivism by addressing the underlying material needs of individuals.

RESOLVE PERSONNEL ISSUES

Additionally, it seems imperative that the Los Angeles District Attorney establish more authority over and understanding with deputy DAs. While some of the L.A. DA Office’s initial responses to the COVID-19 pandemic may seem positive on their face, they are severely undermined when deputies are found to be acting against both the

DA’s own directives and County and Statewide mandates. Occasional differences in interpretation and implementation in a large bureaucracy are inevitable, but it is vital that the District Attorney be able to trust that deputies will follow directives, particularly in dire times such as these.

Conclusion

Major Recommendations

CHARGING DECISIONS

- ❑ Create a “Decline to Charge / Automatic Pre-Plea Diversion” list of charges
- ❑ Improve data collection & dissemination practices, particularly around race

The L.A. DA’s office should work to decrease the number of charges and cases it prosecutes. With 23% of all people prosecuted by the L.A. DA’s office in 2017 and 2018 having all their charges dismissed by either the judge or the prosecutors themselves, the office obviously has the ability to reduce the number of charges they bring by strategically declining to charge crimes that are low-level and for which the DAs don’t have sufficient evidence to charge to begin with. The above statistic shows that almost one in four people are brought into the criminal-legal system by the Los Angeles DA’s office only to have their cases ultimately thrown out.

To that end, the L.A. DA’s office should develop a “decline to charge” list of offenses that are automatically either dropped or diverted pre-charge. Charges should include:

- Charges related to driving with a suspended or revoked license
- Charges related to sex work
- Low-level drug charges
- Trespassing charges
- Charges against individuals for actions that are a result of mental health disorders

Prosecuting these charges in a criminal setting does more harm than help to the individuals involved. Alternatives, like diversion, traffic court, and civil proceedings save taxpayer money and are more likely to address the underlying needs involved parties, allow individuals to stay with their families, stay in school, keep their jobs, and prevent situations from arising in the future that could lead to additional charges.

The prosecution data provided by the Los Angeles District Attorney’s office did not include information about race. It is imperative that the L.A. DA’s office begin collecting race information across ALL of their data, including prosecution data. The office should analyze the racial impact of its charging practices, and both analyses and raw data should be made readily available to the public in a timely manner. Following a racial impact analysis, the L.A. DA office’s charging policies should be changed in order to eliminate racial disparities in charging.

REVIEWING PAST CASES

- Restructure the Conviction Review Unit to improve independence and effectiveness
- Actively review cases that could be eligible for resentencing under PC 1170(d)(1)

The Los Angeles District Attorney's office has not been successful in effectively and efficiently freeing individuals wrongly convicted by the office. The Conviction Review Unit needs to be removed from the rest of the District Attorney's office, and have outside counsel who report to the DA independently. It should regularly and publicly report how many cases it has reviewed, number of ongoing investigations, and exonerations.

In addition to reviewing claims of actual innocence, the CRU should proactively review cases of

individuals that could be eligible for resentencing under PC 1170(d)(1). Individuals still serving time who were sentenced under historic and unjust sentencing guidelines should have the opportunity to receive the same treatment as those sentenced today. Individuals who are over the age of 50 pose little threat to public safety, are most likely to suffer needlessly from incarceration, and cost much more to incarcerate than younger people. The CRU should prioritize reviewing these people's cases.

PROSECUTING LAW ENFORCEMENT

- Support the creation of an independent law enforcement prosecution entity
- Support the creation of an independent victim services entity

Prosecutors rely on the cooperation of law enforcement in order to fulfill their prosecutorial duties. This naturally creates a tension when a prosecutor is then asked to bring charges against a law enforcement official who the prosecutor may need to rely on in the future for other cases. The data show that the Los Angeles District Attorney's office has not shown that it is able to appropriately prosecute law enforcement officials, and therefore the office should support the creation of an entity entirely separate from the District Attorney's office for the purpose of prosecuting cases against law enforcement officials. The Los Angeles District Attorney should publicly advocate for this separation, and transfer the necessary ongoing funding from the DA office's budget to this new entity.

Providing services to alleged victims of crime poses another dilemma. It creates a relationship between the alleged victim and the prosecutor, creating potentially problematic motivation for the prosecutor to believe testimony from the alleged victim even when it is not true.

Furthermore, because of the need for testimony, an alleged victim who is unwilling or unable to provide testimony may receive lower quality services from a division housed in the DA's office. The Bureau of Victim Services, currently housed within the L.A. DA's office, should be separated from the DA's office and funds transferred from the DA office's budget.



DIVERSION

- Collect data regarding diversion and release it publicly
- Prioritize decriminalization and systemic changes over diversion
- Eliminate money-based barriers to diversion
- Make all diversion offers pre-plea, and not require an admission of guilt
- Move all diversion to community-based programs
- Incentivize diversion over prosecution

The L.A. District Attorney's office needs to back up talk regarding diversion with proof that the office actually diverts individuals away from criminal proceedings. The dataset provided by the L.A. DA's office shows that less than 1% of all individuals prosecuted by the office in 2017 and 2018 had even a single charge diverted. In order to demonstrate their commitment to diversion, the L.A. DA's office, for all diversion programs, should track and make public:

1. Referrals, including demographic information and charges
2. Denials for referred individuals, including reasons for denial
3. Eligible individuals who were not referred to diversion, and reasons they were not referred
4. Diversion program successful completions
5. Individuals who fail to abide by the terms of diversion programs, and a description of the noncompliance

All of the above should, at a minimum, be disaggregated by race.

The L.A. DA's office should stop running any diversion programs that are currently operated out of its office, and divert the funds currently used for those programs to community-based

organizations to run diversion programs outside of the criminal-legal system. Successful completion of diversion programs should not require paying fines or fees, including restitution, as a requirement of completion, as this discriminates against individuals who lack the financial means to pay. Many diversion programs currently also exclude individuals for whom an admission of guilt (required for participation in many cases) could result in deportation. In order to avoid needlessly excluding people from participating in diversion programs designed to improve community safety, L.A. DA's office should offer all diversion pre-plea, and diversion should never be contingent on an admission of guilt.

Given that approximately 18.3% of the entire L.A. County Jail population at any given time (over 3,000 individuals on a given day) is suitable and eligible for Mental Health Diversion alone (not including other types of diversion),¹³¹ yet remains incarcerated, the L.A. DA's office needs to automatically divert certain charges. If, under extenuating circumstances, they deem an individual unsuitable for diversion, deputies should be required to file a written request for exemption from this policy. The Los Angeles DA's office also needs to restructure its career advancement policies in order to incentivize diversion over prosecution whenever possible.

PAROLE

- Stop making recommendations regarding parole suitability
- Collect data regarding parole hearing participation

The L.A. DA's office currently has no policy regarding parole hearing positions, but they are regularly involved in making recommendations to the Board of Parole Hearings. In order to maintain the integrity of the Board of Parole Hearings as an entity that determines whether individuals are

suitable for parole, and the DA as an entity that prosecutes criminal cases, the District Attorney's office should discontinue its involvement in parole hearings. The DA's office should collect and make public data regarding any hearings that it does participate in.

IMMIGRATION

- ❑ Ensure immigration-related consequences are considered in the plea process
- ❑ Always use immigration-safe charges
- ❑ Streamline access to post-conviction relief to help erase the ongoing immigration impact of old convictions

No guidelines or training currently exists to ensure L.A. DA prosecutors consider the extra consequences associated with criminal convictions for immigrants. The Los Angeles District Attorney's office should immediately write a policy and training for deputies instructing them to always use immigration-neutral charges that are consistent with the facts of the case. The DA should also

update policies with regard to PC 1473.7 hearings so deputies are not obligated to raise objections without regard to the specific circumstances of the case. Finally, access to post-conviction relief for immigrants needs to be institutionalized so that post-conviction relief motions are reviewed in a consistent and timely manner.

COVID-19 RESPONSE

- ❑ Continue COVID-related decarceration policies permanently and implement new ones

The L.A. DA's response to the COVID-19 pandemic has been noteworthy for its swiftness, if not for its implementation. As things slowly return to something resembling the state of the world pre-COVID-19, instead of reversing the policies implemented during the crisis, the office should embrace these policies as the new normal, and perhaps even expand on that work. The L.A. DA should work to actually implement the policies of:

- allowing, in DA Lacey's own words, "nonviolent offenders who do not pose a danger to the community to remain outside the criminal justice system,"
- requiring that deputy district attorneys "to not request that defendants be remanded on probation or parole violations on nonviolent and non-serious crimes unless the defendant has demonstrated that he or she is a danger to the community," and
- expanding the use of the Pre-filing Diversion Program.

The issue with all of these directives is that no data appears to exist that allows for pre-COVID rates of these measures to be compared to their rates once DA Lacey issued these directives. Because of that, it is impossible to tell whether prosecutors in her office actually followed these public orders, or if she made statements publicly that were then not carried out by her office. Many individuals interviewed for this report who have direct interaction with the

L.A. DA's office reported that they have not seen these changes implemented.

The L.A. DA's office should also support the continuation of the Zero-Dollar Bail policy California implemented to reduce jail overcrowding. This policy only applies to charges that do not endanger the safety of the public, and prevents those without the means to pay bail from languishing in jail while they await a trial that may fail to find them guilty.

The COVID-19 pandemic presents the opportunity to greatly reduce the number of individuals impacted by the criminal-legal system, reduce overcrowding in jails and prisons, and provide support to more people via diversion programs. Maintaining the policies District Attorney Lacey announced during the current pandemic will help ensure the small gains made in improving safety and justice are not lost and instead can continue to be built on.

"I think in order for people to gain confidence, there needs to be transparency and accountability. You, the DA, need to hold your people accountable. And if you can't do that, then get out of the job, give it to somebody who will, simple as that. You're a public official, meaning you work for the people, you don't work for your lobbyist."

DOUGLAS JESSOP Social Justice Advocate in the DA Accountability Coalition, Policy Advocate with Anti-Recidivism Coalition, Social Justice Advocate with the Youth Justice Coalition



Overarching Recommendations

“There are little fiefdoms all over the county. The head deputies don’t care what Jackie Lacey says, does, or thinks. The line attorneys have their reviews conducted by their immediate supervisor, not by Jackie Lacey, so they just do what they’re told.”

THOMAS GONZALEZ, *Public Defender*

Every individual interviewed for this report agreed that implementation of policies vary widely across regions and even between individual deputies. From decisions about whether to charge a wobbler as a felony or a misdemeanor, to the implementation of immigration policies, currently in L.A. the outcomes of someone accused of a crime are in part dependent on where and by whom they are prosecuted. During the COVID-19 pandemic, when \$0-bail had been set on most charges and it was particularly important that as few people as possible be detained pretrial, prosecutors were still arguing for pretrial detention for charges on the \$0 bail schedule. The release of Gina Satriano’s email

regarding ways to use the old bail schedule in spite of the \$0 bail schedule further undermined District Attorney Lacey’s swift response to the crisis.

It is clear that the actions of L.A. District Attorney’s Office staff have not been aligned with the DA’s public statements regarding priorities and strategy. Because employees of the DA’s office have employment protections by nature of being County of Los Angeles employees, the L.A. DA cannot follow the lead of Larry Krasner in Philadelphia and fire prosecutors who are not aligned with the office’s vision of justice. Nevertheless, it is vital that the DA find a way to ensure employees work towards a unified strategy.

“DA accountability can begin with data. The DA’s Office should work with the community to establish protocols for providing the public with all the data the community says is necessary to account for racial and economic disparities seen at every level of the criminal justice system.”

ALEX SHERMAN, *Attorney & Journalist in Los Angeles and a member of the DA Accountability Coalition (his opinions do not necessarily reflect the Coalition’s positions)*

Assembling this report shone a light on the void where L.A. DA data should exist and be publicly available. The L.A. DA’s office failed to provide useful data regarding who they divert from criminal proceedings into programs designed to reduce recidivism and keep the community safe, how often they are doing that, and when they don’t. In response to the ACLU of Northern California’s PRA, the L.A. DA’s office provided documentation of the existence of a database for the office’s Pre-filing Diversion Program, and a policy requiring that it be updated and reports generated from that on a monthly basis. Nevertheless, the office failed

to provide any of those reports or data from the database, despite a legal obligation to do so if those documents exist. Given District Attorney Lacey’s vocal commitment to diversion, it seems very odd that her office would withhold such information if it painted her office’s progress in a good light. Without public-facing information on who does and does not get diverted from criminal proceedings, it is impossible to evaluate the L.A. DA’s commitment to programs that decrease recidivism and keep the community safer.

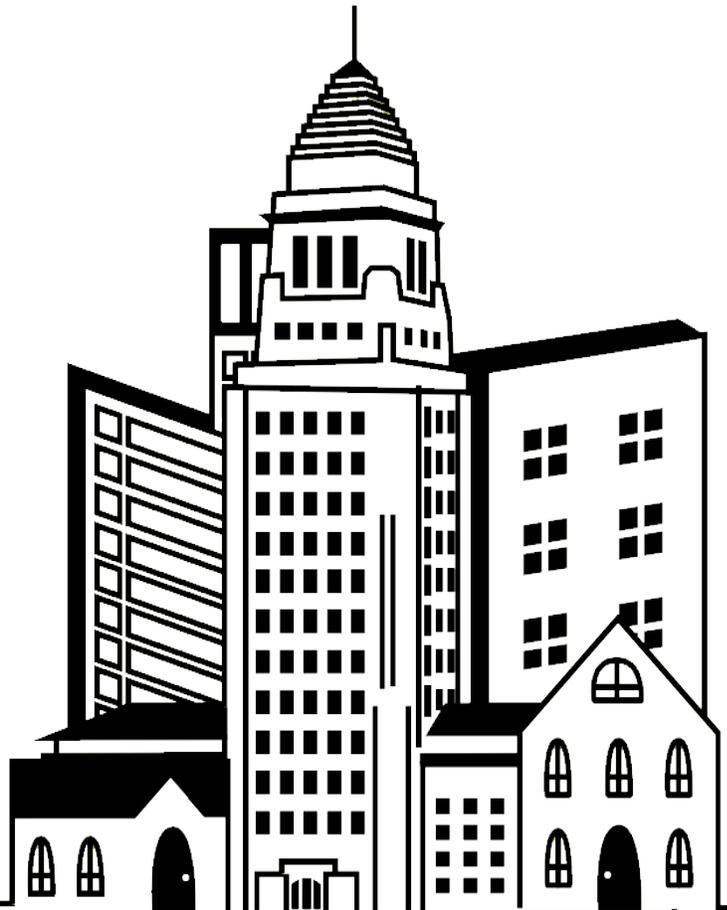
The L.A. DA's office also failed to provide any data on the position the office took for parole hearings. As long as the office continues to play a role in parole hearings, it should collect and publish data regarding that role. Information should include the number of hearings attended, the position the office took, justification for that position, and demographic information about the incarcerated individual.

The prosecution dataset the L.A. DA's office provided in response to the PRA sent by the ACLU of Northern California is also troubling. Despite apparently containing every charge prosecuted by the L.A. DA's office for two entire calendar years, what is missing from that dataset is troubling. The data contains no demographic information aside from age at time of crime and a binary sex variable. Furthermore, no sentencing data was provided and the location data was incomplete (over 40% missing), and reflected where the individuals reported living, not where the alleged crime took place or where they were arrested. The fact that the office did not provide this information in response to the PRA indicates that they do not have that data. Of particular concern is the lack of race data, as racial disparities are of high concern in the criminal-legal context. However, all of these things impede the office's ability to evaluate itself or be evaluated in its pursuit of accountability and justice.

Many models exist for prosecutorial data collection and dissemination. On August 7, 2019, when Governor Ned Lamont signed Public Act 19-59, Connecticut became the first state to pass legislation mandating prosecutorial data collection and presentation statewide. Required data includes charges, diversionary programs, bail requests, plea deals, contact with victims, sentencing recommendations, sentencing outcomes, and demographics including race, ethnicity, sex, and age.¹³² In May 2019, San Francisco District Attorney George Gascón released DA Stat publicly. This data dashboard includes information about

arrests presented, prosecutions, types of incoming cases, and the outcomes of trials in San Francisco County.¹³³ While it lacks a host of vital information, such as demographics, plea deals, and incarceration recommendations, it is updated on a monthly basis, and the office has plans to release much of that missing data in the future.¹³⁴ In March of 2018, Cook County State's Attorney Kim Foxx released six years of prosecutorial data that includes demographic information, the judge's name, whether the case was resolved via plea bargain or verdict, and sentence type and length, among others.¹³⁵

In the interest of demonstrating its commitment to public accountability, and to showcase the office's successes and opportunities for improvement, it is vital that the L.A. DA's office collect and release meaningful prosecutorial data.



Summary of Major Recommendations

CHARGING DECISIONS

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- Create a “Decline to Charge / Automatic Pre-Plea Diversion” list of charges
- Improve data collection & dissemination practices, particularly around race

REVIEWING PAST CASES

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- Restructure the Conviction Review Unit to improve independence and effectiveness
- Actively review cases that could be eligible for resentencing under PC 1170(d)(1)

PROSECUTING LAW ENFORCEMENT

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- Support the creation of an independent law enforcement prosecution entity
- Support the creation of an independent victim services entity

DIVERSION

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- Collect data regarding diversion and release it publicly
- Prioritize decriminalization and systemic changes over diversion
- Eliminate money-based barriers to diversion
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PAROLE

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- Stop making recommendations regarding parole suitability
- Collect data regarding parole hearing participation

IMMIGRATION

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- Ensure immigration-related consequences are considered in the plea process
- Always use immigration-safe charges
- Streamline access to post-conviction relief to help erase the ongoing immigration impact of old convictions
- Stop making recommendations regarding parole suitability
- Collect data regarding hearing participation
- Ensure immigration-related consequences are considered in the plea process

COVID-19 RESPONSE

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- Continue COVID-related decarceration policies permanently and implement new ones

Appendices

Appendix 1

PRA Request Letter

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AMERICAN CIVIL LIBERTIES UNION
FOUNDATION

Northern
California

May 13, 2019

Via U.S. Mail and Email

District Attorney Jackie Lacey
Los Angeles District Attorney's Office
211 W. Temple Street, Suite 1200
Los Angeles, CA 90012
info@da.lacounty.gov

Re: Public Records Act Request

Dear District Attorney Jackie Lacey:

We write to request the release of public records from the Los Angeles county's District Attorney's office pursuant to the California Public Records Act (Government Code section 6250 *et seq.*), we seek to obtain the following information:

1. Records¹ of prosecution data within your possession for calendar year 2017 and 2018, including but not limited to,
 - a. Unique identifiers for each person, charges, and outcomes for all minors (any persons under the age of 18) prosecuted directly in adult court in Los Angeles County (adult court is defined as a court of criminal jurisdiction) (otherwise known as "pipeline" or "direct file" cases) under Welfare and Institutions Code section 707.
 - i. Unique identifiers for each person, charges, and outcomes for all minors prosecuted in adult court in Los Angeles County after any one of the following:

¹ The term "records" as used in this request is defined as "any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any state or local agency regardless of physical form or characteristics." Cal. Govt. Code § 6252, subsection (e). "Writing" is defined as "any handwriting, typewriting, printing, photostating, photographing, photocopying, transmitting by electronic mail or facsimile, and every other means of recording upon any tangible thing any form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof, and any record thereby created, regardless of the manner in which the record has been stored." Cal. Govt. Code § 6252 (g).

American Civil Liberties Union of Northern California

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray
SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707
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Appendix 1

PRA Request Letter

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1. a judicial certification to adult court following a juvenile transfer hearing under the newly amended Welfare and Institutions Code section 707 subsection (a);
2. a juvenile defendant's waiver of transfer hearing or stipulation to adult court following the District Attorney's motion to transfer to adult court.
- b. Unique case identifiers, charges, and outcomes for all minors prosecuted in juvenile court in Los Angeles county, including, but not limited to demographic data, charges filed, and case outcomes during the calendar year of 2017 and 2018.
- c. Unique case identifiers, charges, and outcomes (including diversion) of all misdemeanor charges for minors and adults in Los Angeles county.
- d. Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in Los Angeles county.
2. All documents and records related to all diversion programs offered or used by the DA's office, how many people utilized those programs, demographics of those people, the charges they were facing, outcomes of those cases, requirements for completing diversion, and any charges or costs associated with those diversion programs for calendar years 2017 and 2018.
3. All records relating to how many parole hearings the office attended, how many hearings your office opposed, and how many parole hearings your office opposed when the next of kin took no position in the calendar years of 2017 and 2018.
4. Copies of all office policies, including but not limited to Brady compliance policy, charging and plea deal offer policies, pardons and commutations, etc. Request #3 is not limited to calendar year 2017 and 2018.
5. Copies of all office policies that relate to immigration including but not limited to:
 - a. Records that refer to office efforts to implement its obligations under Penal Code 1016.3(b).
 - b. Records that refer to office efforts to implement its obligations under Penal Code 1473.7.
 - c. Records, memoranda, and emails that relate to the creation and development of an immigration policy for the office.
 - d. Request #5 is not limited to calendar year 2017 and 2018.
6. All records concerning implementation of SB 1421, including copies of any new policies, training manuals or procedures regarding SB 1421, including any policies, procedures or training manuals for making SB 1421 requests, maintaining SB 1421 records, disclosures of SB 1421 requests to criminal defendants, revisions of any *Brady* policies in light of SB 1421, and all policies and procedures for reviewing all criminal convictions, arrests and charging decisions, in view of SB 1421. Request #4 is not limited to calendar year 2017 and 2018.

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Please respond to this request in ten days, either by providing the requested information or providing a written response setting forth the specific legal authority on which you rely in failing to disclose each requested record, or by specifying a date in the near future to respond to the request. See Cal. Gov't Code § 6255.

If any records requested above are available in electronic format, please provide them in an electronic format, as provided in Govt. Code § 6253.9. To assist with the prompt release of responsive material, we ask that you make records available to us as you locate them, rather than waiting until all responsive records have been collected and copied.

If I can provide any clarification that will help expedite your attention to my request, please contact us at yhaile@aclunc.org.

Because this request is made by a non-profit organization with the intent to make this material accessible to the public as promptly as possible, we request that you waive any fees. However, should you be unable to do so, we will reimburse your agency for the "direct costs" of copying these records plus postage. If you anticipate these costs to exceed \$50.00, please notify us prior to making the copies.

Thank you in advance for providing the records we have requested. Please do not hesitate to contact us with any questions regarding this letter.

Yours Truly,

Yoel Haile
Criminal Justice Associate
ACLU of Northern California

American Civil Liberties Union of Northern California

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Appendix 2

List Of Documents Responsive To Public Records Act

All of the following documents can be found at meetyourda.org/public-act-request-pra/lapra/5519

Spreadsheet containing all charges prosecuted by the L.A. DA's office in 2017 & 2018

Letter from the L.A. DA's office to address request for diversion data and information

Los Angeles District Attorney's Office Legal Policy Manual chapter / sections:

- 15.05: Sentenced Offender Drug Court
- 28.01 Mental Health Diversion
- 28.02 Alternative Sentencing Court Programs

Spreadsheets indicating the number of parole hearings the L.A. DA's office attended in 2017 & 2018

Los Angeles District Attorney's Office Legal Policy Manual chapters:

- 2: Crime Charging - Generally
- 5: Declining to Charge
- 6: Alternatives to Charging
- 10: Misdemeanor Case Settlement Policy
- 12: Felony Case Settlement Policy
- 14: Disclosure of Exculpatory and Impeachment Information

Special Directives

- 17-09, regarding Penal Code Section 1473.7 Motions
- 18-04, addendum to Special Directive 17-09
- 18-11, regarding AB 2867 Amendments to Penal Code Section 1473.7

Appendix 3

List of decline-to-charge and default-diversion charges

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Charge		Recommended DA Action
Advertising without a License	BP 7027	Decline to Charge
Contracting without a License	BP 7026	Decline to Charge
Failure to bring minor to continuing education	EC 48454	Decline to Charge
Simple Drug Possession	PC 11350	Decline to Charge
Drug Possession for Sale	PC 11351	Default Pre-Plea Diversion
Peyote Possession	HS 11363	Decline to Charge
Drug Paraphernalia Possession	HS 11364	Decline to Charge
Meth Position	PC 11377	Decline to Charge
Under the Influence of Drugs	HS 11550	Decline to Charge
Resisting Arrest	PC 148	Decline to Charge
	PC 69	Decline to Charge
Possession of Dagger	PC 21310	Decline to Charge
Possession of Metal Knuckles	PC 21810	Decline to Charge
Possession of Nunchaku	PC 22010	Decline to Charge
Possession of Billy Club	PC 22210	Decline to Charge
Possession of Stun Gun	PC 22620	Decline to Charge
	PC 22610	Decline to Charge
Disturbing the Peace	PC 415	Decline to Charge
Criminal Threats	PC 422	Decline to Charge
Possession of Burglary Tools	PC 466	Decline to Charge
Petty Theft	PC 484	Default Pre-Plea Diversion
Appropriation of Lost Property	PC 485	Default Pre-Plea Diversion
Vandalism	PC 594	Decline to Charge
Possession of Vandalism Tools	PC 594.2	Decline to Charge

Appendix 3

List of decline-to-charge and default-diversion charges

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Charge		Recommended DA Action
Trespassing	PC 602	Decline to Charge
Disorderly Conduct	PC 647	Default Pre-Plea Diversion
Loitering for Prostitution	PC 654.22(a)	Decline to Charge
Driving Stolen Vehicle	VC 10851	Default Pre-Plea Diversion
Driving without License	VC 12500	Decline to Charge
Driving with Suspended License	VS 14601	Decline to Charge
DUI	PC 23152	Default Pre-Plea Diversion
Vehicle Registration	VC 4125.5 VC 4159	Decline to Charge Decline to Charge
Bringing Drugs to a Prison	PC 4573	Decline to Charge
Burglary	PC 459	Default Pre-Plea Diversion
Repeat Theft	PC 490.2	Default Pre-Plea Diversion
Identity Theft	PC 530.5	Default Pre-Plea Diversion
Indecent Exposure	PC 314	Default Pre-Plea Diversion
Robbery	PC 211	Default Pre-Plea Diversion
Possession of Ammunition (Minor)	PC 29650	Decline to Charge
Possession of Ammunition (Felon)	PC 30305	Default Pre-Plea Diversion
Carrying Loaded Firearm	PC 25850	Default Pre-Plea Diversion
Carrying Concealed Firearm	PC 25400	Default Pre-Plea Diversion
Prohibited Firearm Possession	PC 29800	Default Pre-Plea Diversion

Appendix 3

List of decline-to-charge and default-diversion charges

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The list below is a “clean” format of showing the charges. In reality, the data provided by the L.A. DA’s office was very messy, so the following list shows the charges as the L.A. DA’s office provided them. The first letter (“F”, “I”, “M”, or “O”) indicates “felony”, “infraction”, “misdemeanor”, or “other” and comes from the “charge level” column provided in the original dataset. The second two letters come from the “code” column of the original dataset, and indicate “Health and Safety code”, “Penal Code”, “Vehicle Code”, etc. There are some cases where the “code” column contains what appear to be errors (e.g. “##”, and “NA”). Those are reproduced here. The last characters (after the second underscore) come from the “section” column of the original dataset, and represent the statute section. Some errors (e.g. “594.70000000000005”) are due to errors in how the data was read into R for analysis. Others (e.g. M_NA_#490.2(A)/21) are merely reproduced exactly as they were provided by the L.A. DA’s office.

F_BP_7027.3	F_VC_23152(B)&23550.5(B)	M_PC_211	M_PC_602(K)
F_HS_11350	F_VC_23152(E)&23550	M_PC_21110	M_PC_602(K)(1)
F_HS_11350(A)	F_VC_23152(E)&23550.5	M_PC_21310	M_PC_602(L)
F_HS_11351	F_VC_23152(F)&23550	M_PC_21810	M_PC_602(L)(1)
F_HS_11351.5	F_VC_23152(F)&23550.5(A)	M_PC_22010	M_PC_602(L)(2)
F_HS_11364	F_VC_23152(G)&23550	M_PC_22210	M_PC_602(L)(3)
F_HS_11377	F_VC_422(A)	M_PC_22610(A)	M_PC_602(L)(4)
F_HS_11377(A)	F_WI_10980(C)(2)	M_PC_22610(B)	M_PC_602(M)
F_HS_11550	F_WI_10980(D)	M_PC_22610(D)	M_PC_602(N)
F_HS_664/11377(A)	F_WI_10980(G)	M_PC_29650	M_PC_602(O)
F_PC_148(A)(1)	F_WI_10980(G)(2)	M_PC_29800(A)(1)	M_PC_602(O)(1)
F_PC_211	I_AR_4221	M_PC_30305(A)(1)	M_PC_602(O)(2)
F_PC_211A	I_HS_11364	M_PC_30305(B)(1)	M_PC_602(P)
F_PC_21310	I_HS_11377	M_PC_314(1)	M_PC_602(Q)
F_PC_21810	I_HS_11377(A)	M_PC_314{1}	M_PC_602(S)
F_PC_22010	I_PC_22610(A)	M_PC_415	M_PC_602(T)
F_PC_22210	I_PC_415	M_PC_415.5(A)	M_PC_602(T)(1)
F_PC_29650	I_PC_415(1)	M_PC_415(1)	M_PC_602(U)(1)
F_PC_29800(A)(1)	I_PC_415(2)	M_PC_415(2)	M_PC_647(A)
F_PC_29800(A)(2)	I_PC_415(3)	M_PC_415(3)	M_PC_647(B)

Appendix 3

List of decline-to-charge and default-diversion charges

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F_PC_29800(B)	I_PC_459.5	M_PC_415{1}	M_PC_647(B)(1)
F_PC_30305(A)(1)	I_PC_484(A)	M_PC_415{2}	M_PC_647(B)(2)
F_PC_314(1)	I_PC_484(A)&490.1	M_PC_415{3}	M_PC_647(C)
F_PC_314{1}	I_PC_484(A)&490.2	M_PC_422	M_PC_647(D)
F_PC_422	I_PC_485	M_PC_422.6(A)	M_PC_647(E)
F_PC_422.6(A)	I_PC_485&487(A)	M_PC_422.6(B)	M_PC_647(F)
F_PC_422(A)	I_PC_485&490.2	M_PC_422(A)	M_PC_647(H)
F_PC_4573	I_PC_490.2	M_PC_4573.5	M_PC_647(I)
F_PC_4573.5	I_PC_530.5(A)	M_PC_4573.6(A)	M_PC_647(J)(1)
F_PC_4573.6(A)	I_PC_602	M_PC_4573.60000000000004	M_PC_647(J)(2)
F_PC_4573.60000000000004	I_PC_602.1(A)	M_PC_4573(A)	M_PC_647(J)(3)
F_PC_4573.8	I_PC_602.8(A)	M_PC_459	M_PC_647(J)(3)(A)
F_PC_4573.89999999999996	I_PC_602(A)	M_PC_459.5	M_PC_647(J)(4)
F_PC_4573.9(A)	I_PC_602(K)	M_PC_466	M_PC_647(J)(4)&(L)(2)
F_PC_4573(A)	I_PC_602(L)(1)	M_PC_466.3(A)	M_PC_647C
F_PC_459	I_PC_602(M)	M_PC_466.7	M_PC_653.22(A)
F_PC_459.5	I_PC_602(N)	M_PC_484	M_PC_664/422
F_PC_459R*	I_PC_602(O)	M_PC_484.1(A)	M_PC_664/422(A)
F_PC_466	I_PC_602(O)(1)	M_PC_484(A)	M_PC_664/484(A)&490.2
F_PC_484.1(A)	I_PC_647(E)	M_PC_484(A)/488	M_PC_664/594(A)
F_PC_484(A)	I_PC_647(F)	M_PC_484(A)&490.1	M_PC_69
F_PC_484(A)&490.2	I_VC_12500(A)	M_PC_484(A)&490.2	M_VC_10851
F_PC_484(A)&490.2&666	I_VC_12500(B)	M_PC_484(A)&490.2&666	M_VC_10851(A)
F_PC_484B	I_VC_12500(C)	M_PC_484/488	M_VC_12500(A)
F_PC_484E(A)	I_VC_12500(D)	M_PC_484E(A)	M_VC_12500(B)
F_PC_484E(B)	I_VC_14601.1(A)	M_PC_484E(B)	M_VC_14601
F_PC_484E(C)	I_VC_14601.1(B)(2)	M_PC_484E(C)	M_VC_14601.1(A)

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List of decline-to-charge and default-diversion charges

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F_PC_484E(D)	I_VC_14601.2(A)	M_PC_484E(D)	M_VC_14601.1(B)(2)
F_PC_484F(2)	I_VC_14601.5(A)	M_PC_484F(2)	M_VC_14601.2(A)
F_PC_484F(A)	I_VC_14601(A)	M_PC_484F(A)	M_VC_14601.2(A)&(D)(2)
F_PC_484F(B)	I_VC_23152(A)	M_PC_484G	M_VC_14601.2(B)
F_PC_484G	I_VC_23152(F)	M_PC_484G(A)	M_VC_14601.2(B)&(D)(2)
F_PC_484G(A)	I_VC_4152.5	M_PC_484G(B)	M_VC_14601.3
F_PC_484G(B)	I_VC_4159	M_PC_484H(B)	M_VC_14601.3(A)
F_PC_484H(A)	M_##_485&PTPC	M_PC_484I(A)	M_VC_14601.3(A)(2)
F_PC_484H(B)	M_##_664/490.2PC	M_PC_484I(B)	M_VC_14601.3(E)(2)
F_PC_484I(B)	M_##_PT490.2PC	M_PC_484I(C)	M_VC_14601.5(A)
F_PC_484I(C)	M_BP_7027.1	M_PC_485	M_VC_14601.5(A)&(D)(2)
F_PC_485&487(A)	M_BP_7027.1(A)	M_PC_485&487(A)	M_VC_14601.5(B)
F_PC_530.5	M_BP_7027.3	M_PC_485&490.2	M_VC_14601.5(B)&(D)(2)
F_PC_530.5(A)	M_BP_7028	M_PC_490.2	M_VC_14601(A)
F_PC_530.5(C)(1)	M_BP_7028(A)	M_PC_504&490.2	M_VC_14601(B)(2)
F_PC_530.5(C)(2)	M_BP_7028(B)	M_PC_504A&490.2	M_VC_23152(A)
F_PC_530.5(C)(3)	M_BP_7028(C)	M_PC_530.5	M_VC_23152(A)&23540
F_PC_530.5(D)	M_EC_48454(1)	M_PC_530.5(A)	M_VC_23152(A)&23546
F_PC_530.5(D)(1)	M_HS_11350	M_PC_530.5(C)(1)	M_VC_23152(A)&23550
F_PC_530.5(D)(2)	M_HS_11350(A)	M_PC_530.5(C)(2)	M_VC_23152(B)
F_PC_594	M_HS_11350(B)	M_PC_530.5(C)(3)	M_VC_23152(B)&23540
F_PC_594(A)	M_HS_11351	M_PC_530.5(D)(1)	M_VC_23152(B)&23546
F_PC_594(A)(1)	M_HS_11351.5	M_PC_530.5(E)	M_VC_23152(B)&23550
F_PC_594(A)(2)	M_HS_11364	M_PC_594	M_VC_23152(B)&23550.5(A)
F_PC_594(A)(3)	M_HS_11364.1	M_PC_594(A)	M_VC_23152(C)
F_PC_594(B)(1)	M_HS_11364.1(A)	M_PC_594(A)(1)	M_VC_23152(C)&23540
F_PC_647(B)	M_HS_11364.1(A)(1)	M_PC_594(A)(2)	M_VC_23152(C)&23546

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List of decline-to-charge and default-diversion charges

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F_PC_647(B)&647F	M_HS_11364.7(A)	M_PC_594(B)(2)	M_VC_23152(D)
F_PC_664/422	M_HS_11364(A)	M_PC_602	M_VC_23152(D)&23540
F_PC_664/422(A)	M_HS_11377	M_PC_602.1(A)	M_VC_23152(E)
F_PC_664/484(A)&490.2	M_HS_11377(A)	M_PC_602.1(B)	M_VC_23152(E)&23540
F_PC_664/594(A)	M_HS_11377(A)(1)	M_PC_602.5	M_VC_23152(E)&23546
F_PC_664/594(B)(1)	M_HS_11377(B)(1)	M_PC_602.5(A)	M_VC_23152(E)&23550
F_PC_69	M_HS_11550	M_PC_602.5(B)	M_VC_23152(F)
F_VC_10851	M_HS_11550(A)	M_PC_602.6	M_VC_23152(F)&23540
F_VC_10851(A)	M_LK_4220	M_PC_602.8(A)	M_VC_23152(F)&23546
F_VC_23152(A)	M_NA_#14601.1(B)(1)/29	M_PC_602(A)	M_VC_23152(F)&23550
F_VC_23152(A)&23550	M_NA_#14601.2(B)&(D)(2)	M_PC_602(C)	M_VC_23152(G)
F_VC_23152(A)&23550.5	M_NA_#14601.5(A)&(D)(2)	M_PC_602(D)	M_VC_23152(G)&23540
F_VC_23152(A)&23550.5(A)	M_NA_#14601.5/29	M_PC_602(E)	M_WI_10980(C)(1)
F_VC_23152(A)&23550.5(B)	M_NA_#484(A)-490.2(A)/2	M_PC_602(F)	M_WI_10980(C)(2)
F_VC_23152(B)	M_NA_#490.2(A)/21	M_PC_602(H)	O_VC_23152(B)
F_VC_23152(B)&23550	M_NA_#7028(A)(1)/04	M_PC_602(H)(1)	
F_VC_23152(B)&23550.5	M_PC_148	M_PC_602(I)	
F_VC_23152(B)&23550.5(A)	M_PC_148(A)(1)	M_PC_602(J)	

Endnotes

- ¹ Here, and throughout this report, the term “criminal-legal” will be used to refer to what many people commonly think of as the “criminal justice” system. This choice of words is made to reflect the fact that the “justice system” framework in the United States often does not support justice for victims, responsible parties, and innocent people. Direct quotes will use whatever term the individual or document quoted used.
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²⁵ WIC 707(b) describes additional felonies which are categorized as serious or violent for juveniles, so all analyses of serious or violent felonies are restricted to adults.

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³⁹ L.A. DA Legal Policy Manual 5.02.01

⁴⁰ L.A. DA Legal Policy Manual 5.02.07

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