



# IN (JUSTICE) in ALAMEDA COUNTY

## A Case for Reform and Accountability

District Attorneys have a tremendous amount of power within the criminal legal system. Their actions have long fueled overcriminalization and the rise of mass incarceration.

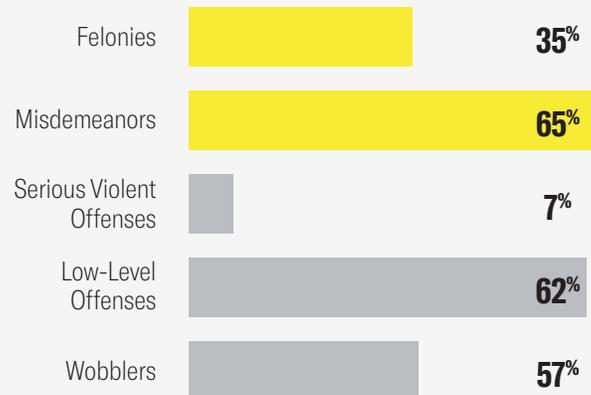
Alameda County Prosecutors have outsized influence over who gets charged with a criminal offense. They decide whether someone will get probation and, if so, on what terms. They have a say in whether an individual is diverted to a treatment program instead of warehoused in jail or prison. DAs have an important voice in decisions over whether someone gets parole, or the death penalty.

This report, prepared by the ACLU of Northern California and Urban Peace Movement, calls for measures that the Alameda County District Attorney can take to reduce incarceration and its particularly devastating impact on Black and brown communities in Alameda County. Our recommendations were informed by the public records requests and analysis, community engagement, and court watching. The main findings and recommendations are summarized below.

### Charging Decisions

Data provided by the ACDA's office reveals that of the 85,972 charges their office prosecuted in 2017 and 2018, 65% were misdemeanors and 35% were

**Frequency of Charge Types, 2017-2018**



felonies. 53,036 (62%) were low-level offenses that the ACLU and UPM recommend DAs always either not file charges at all or divert pre-plea to various diversion programs. A mere 7 % of total crimes charged were serious and violent felonies, though they command the most public attention.

### Top 5 Most Common Adult Charges in Alameda County, 2017-2018

Offense	Number of charges	Cases with at least one of these charges <sup>1</sup>	Cases with exclusively this charge
DUI (VC 23152)*	16,854	8,625	5,112
Petty Theft (PC 484 and subsections)*	3,999	3,294	1,903
Suspended Driving Privileges-Related (VC 14601.1-.5)^	3,567	3,292	564
Possession of Paraphernalia (HS 11364)^	3,336	3,147	504
Possession of Controlled Substance (HS11377 and subsections)*	2,852	2,738	567
<b>Sum of top 5 charges</b>	<b>30,608</b>	<b>21,096</b>	<b>8,650</b>

<sup>1</sup> This column indicates the number of unique cases with at least one of the charges listed (for example, there are 8,625 unique cases with at least one DUI charge)  
 \* "Diversion offenses"    ^ "DTC or Decline to Charge offenses"

The Alameda County District Attorney's office should:

- Develop a “Decline to Charge / Pre-Plea Diversion” list of charges that are automatically dropped or diverted.
- Institute a policy to charge most, if not all, wobblers [**offenses that can be charged as misdemeanors or felonies at the discretion of prosecutors**] as misdemeanors instead of felonies, including Burglary (PC 459), Driving a Stolen Vehicle (VC 10851a), Larceny (PC 496d(a)), Battery (PC 242), and Carrying a loaded firearm (PC 25850).
- Eliminate the use of sentence enhancements since these policies are major drivers of mass incarceration and racial disparities. The San Francisco and Los Angeles District Attorneys already have these policies in place.



## Police Accountability

Black individuals make up 44% of people killed by law enforcement in Alameda County, even though they're only 11% of the population. The ACDA continuously fails to file charges against police officers involved in officer-involved shootings and deaths.

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

- Make public the “Brady list” (list of non-credible officers who the DA's office will NOT use as witnesses)
- No longer accept donations from police unions, thereby removing their undo influence on campaign finance.

## 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. After

consistent advocacy from community-based organizations, Alameda County District Attorney Nancy O'Malley has updated the office's immigration policy with encouraging improvements that could reduce the number of charges filed against people from immigrant communities. The ACDA should continue to mitigate the adverse immigration consequence of convictions through regular consultations with community based organizations and advocates.



## Diversion Programs

While the data relating to diversion was incomplete, it showed only 5% of people charged with crimes had any of their charges diverted by the Alameda County District Attorney — in 2017 and 2018 combined. The ACDA should work to increase access to diversion programs and collaborative courts by:

- Reducing exclusion criteria.
- Expanding the eligibility criteria.
- Removing the requirement that individuals must plead before they can enroll.
- Ensuring that all programs are offered pre-plea.



## Parole and Sentencing

While the Board of Parole Hearings has the decision-making power over the release of incarcerated people from prison, District Attorneys opposition carries significant weight.

**In 2018, out of 198 parole hearings attended by the ACDA, prosecutors opposed release in 139 or 70% of cases.** The ACDA should:

- Institute a parole policy where the Alameda County District Attorney only involves itself in the process to support the release of individuals much like the LA DA's new policy.
- Follow the lead of San Francisco DA, Chesa Boudin, by formally instituting a Sentencing Planning Program that tailors sentencing to better meet the goals of recidivism reduction and community safety.
- The ACDA should affirmatively seek to resentence people through the 1170d resentencing mechanism (legal tool that allows DAs to recall or reduce excessive sentences) available to prosecutors.