



IN (JUSTICE) in ORANGE COUNTY

A Case for Change and Accountability

District Attorneys (DAs) wield significant influence over criminal justice proceedings. They decide whether to bring charges, what charges to bring, whether to file additional sentence enhancements, or even whether to pursue the death penalty. DAs have historically prioritized aggressive “tough-on-crime” prosecution over rehabilitative justice, contributing heavily to the skyrocketing of incarceration. This report, prepared by the ACLU of Northern California, analyzes the practices and policies of the Orange County District Attorney’s Office to make urgent recommendations for reform and systemic change.

The ACLU’s request for data was received by current OCDA Todd Spitzer, who took office in 2019. The OCDA’s Office only agreed to turn over charging data from when Spitzer’s predecessor, Tony Rackauckas, was in office. The lack of transparency with respect to charging data under the current OCDA’s tenure is particularly concerning, given that the current OCDA ran on a platform of transparency. All available evidence suggests that the office’s policies and practices have not shifted substantially under the current OCDA. Key findings and recommendations are summarized below.

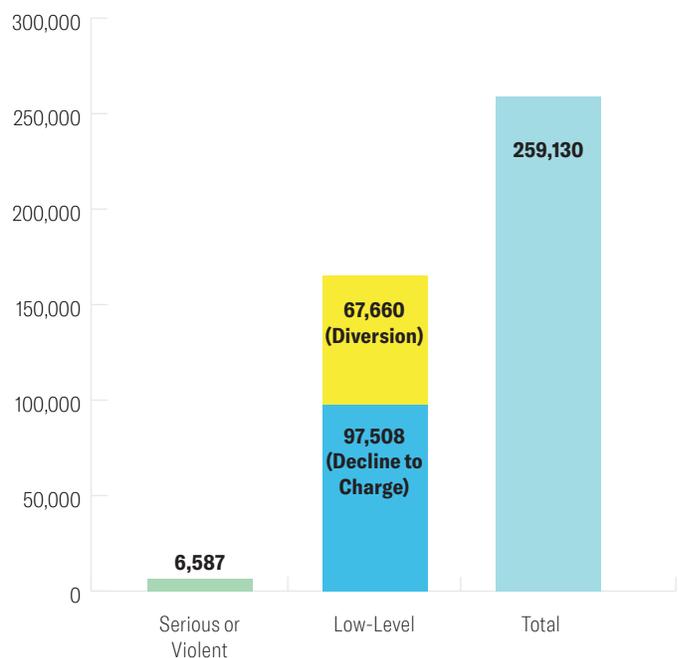
Charging Decisions

In 2017 and 2018 the OCDA’s Office filed 259,130 charges and 4,479 enhancements against 121,200 individuals. Close to two-thirds (64 percent) of all charges filed in those two years were low-level offenses that should be either declined to charge or diverted pre-filing.

Although the current OCDA’s refusal to turn over charging records prevents a comprehensive analysis of the office’s charging practices, Superior Court records from 2019 and 2020 obtained by the Voice of OC reveal that every single one of the 10 most common charges filed by the office were for low-level offenses.

There were persistent racial disparities across the OCDA’s Office’s charging practices, and Black people were more likely to be charged with a crime, more likely to be charged with a felony, and more likely to be negatively impacted by discretionary charging practices related to wobblers, enhancements, and diversion than white people.

Frequency of Serious and Low-Level Charges



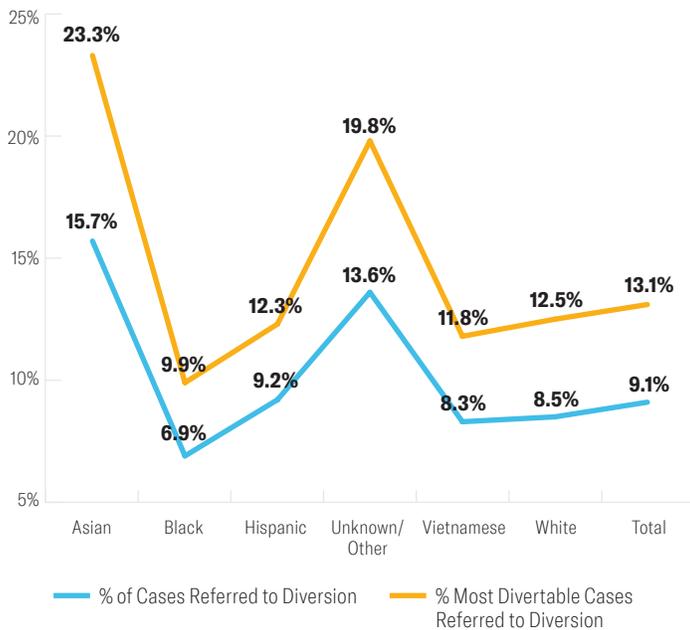
To address overcharging, extreme sentencing, and racial disparities, the OCDA’s Office should:

- End the criminal prosecution of low-level offenses by adopting the ACLU of Northern California’s decline-to-charge and pre-file diversion lists, which would eliminate more than half of the DA’s caseload;
- Develop an internal policy to presumptively file wobbler charges as misdemeanors; and
- Develop an internal policy to eliminate the use of sentence enhancements, which are a major contributor of extreme sentencing and racial disparities.

Diversion and Racial Disparities

According to charging data provided by the OCDA's Office, 9 percent of closed cases that were filed in 2017 and 2018 were referred to one of the county's misdemeanor or drug diversion programs. A vast majority of those commonly diverted charges, including possession of drugs or paraphernalia should have been declined rather than diverted, as formal involvement with the criminal legal system actually worsens outcomes. Diversion in Orange County also appears to exacerbate racial disparities, because Black people are least likely to be referred to diversion, even when controlling for the severity of charges

Access to Diversion Across Race



To expand access to diversion without widening the net of social control the OCDA's Office should:

- Reduce arbitrary restrictions and expand eligibility criteria for diversion, including adopting the ACLU of Northern California's pre-file diversion list (See Appendix B);
- Ensure all diversion is pre-charge and does not require admission of guilt;
- Ensure that all diversion is offered free of charge to participants; and
- Dedicate resources to understanding and eliminating racial disparities in diversion access

Police Accountability

Between 2019 and 2020, the OCDA's office reviewed 24 police shootings. Even when publicly available information suggests gross police misconduct, the OCDA's Office declined to file charges in every instance.



To hold law enforcement accountable for their illegal conduct, the OCDA's Office should:

- Support the creation of an independent office — outside of the DA, Sheriff, and other police departments — to investigate and hold law enforcement officers accountable for their illegal conduct;
- Pledge to never accept law enforcement campaign contributions for future campaigns in order to reduce the possibility of a conflict of interest when prosecuting law enforcement officers; and
- Create a committee that is responsive to families who have encountered police misconduct, brutality, and killing, including connecting them with services and compensation.

Systemic Change

While the OCDA must take immediate action to reform the office's policies and practices to decarcerate and reduce racial disparities, systemic changes to shrink the footprint of prosecution are necessary at the county, state, and federal levels.

To support systemic changes to reduce incarceration, the OCDA's Office should:

- Publicly support state legislation to decriminalize low-level decline-to-charge offenses, re-classify wobblers as misdemeanors, and eliminate sentence enhancements;
- Publicly support state legislation to end police in schools, end the adult prosecution of children, and expand developmentally appropriate alternatives to incarceration for all youth;
- Publicly oppose the expansion of Musick jail; and
- Work with the OC Board of Supervisors to ensure that funding saved from declining to prosecute low-level crimes be redirected outside of the DA's office to invest in community-based restorative justice programming and supportive services.