



IN (JUSTICE) in MERCED

A Case for Change and Accountability

Low-Level Offenses

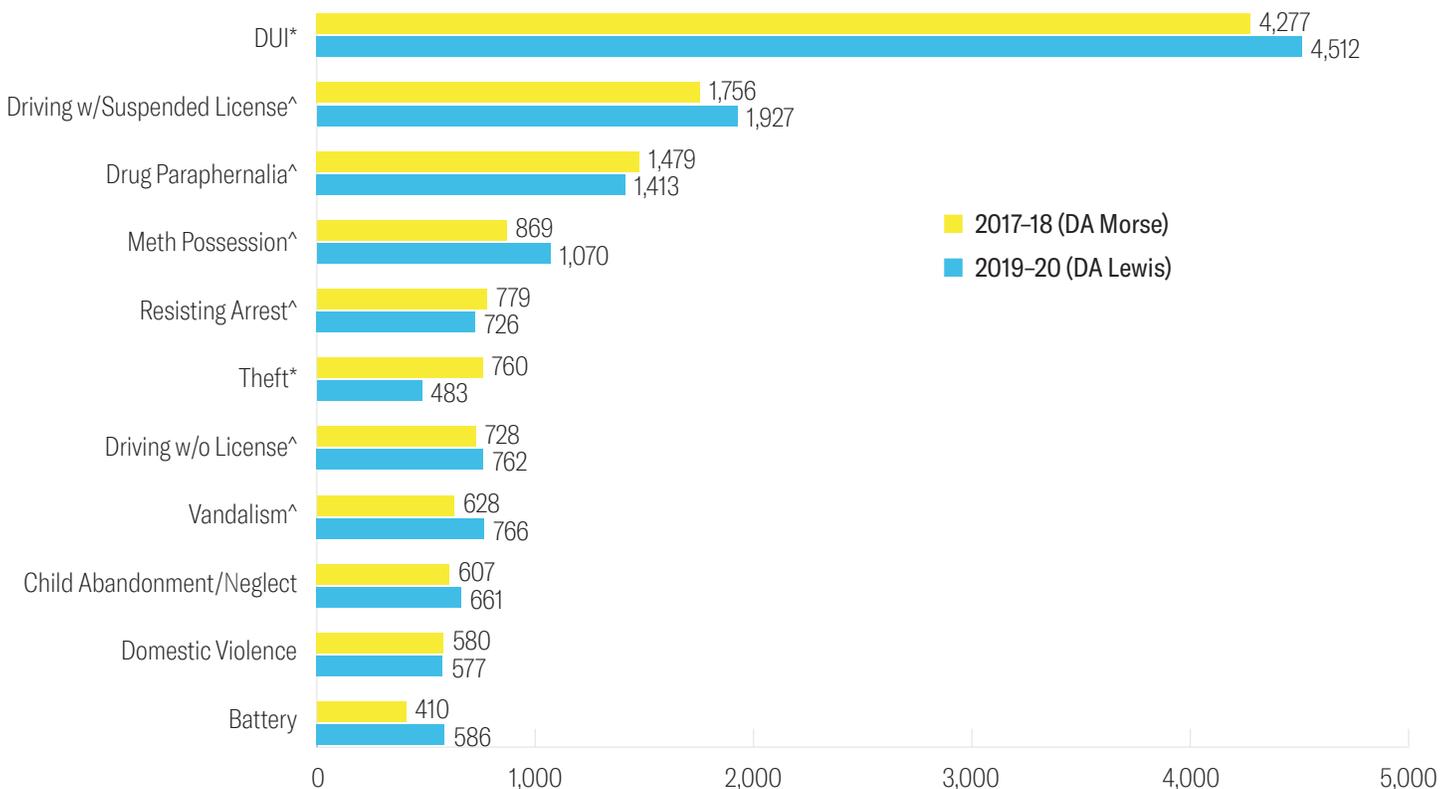
Despite the decrease in crime rates associated with COVID-19, DA Lewis filed more charges in 2019 and 2020 than her predecessor did in the previous two years. Three quarters of all charges filed by former DA Morse in 2017–18 and DA Lewis in 2019-20 were misdemeanor charges. Furthermore, 62 percent of all charges filed under DA Morse and DA Lewis were for offenses that should be declined to charge or diverted to community-based treatment programs. The eight most commonly filed charges across 2017–2020 were all low-level charges, which continued to be filed at nearly identical rates across the two administrations.

Low-level crimes dominated the DA’s caseload, and serious or violent crimes only represented about 5 percent of the charges filed by each DA.

The Merced DA should end overly punitive charging and sentencing practices by:

- Adopting a decline-to-charge list of extremely low-level offenses that should not be criminally prosecuted, like simple drug possession and trespassing, which would likely reduce criminal filings by 33 percent;
- Adopting an automatic pre-file diversion list of low-level offenses that can be better addressed by community-based treatment and programming, like DUIs and petty theft, which would additionally reduce criminal filings by 29 percent.

Most Common Charges Filed By DAs Morse and Lewis



* denotes a charge on our Diversion list while ^ denotes a charge on our DTC list.

Youth Justice

Although the total number of charges filed against adults increased under DA Lewis, the total number of charges filed against youth dropped from 1,510 in 2017–18 to 1,226 charges in 2019–20. Under former DA Morse, 45.6 percent of charges filed against minors were misdemeanors and 54.4 percent were felonies. Under DA Lewis the percent of misdemeanor charges dropped slightly to 41.8 percent and misdemeanors grew to 58.2 percent. Three children were tried as adults under DA Morse in 2017–18 and two children were tried as adults under DA Lewis in 2019–20.

The Merced DA should prioritize non-carceral alternatives for youth by:

- Instituting a policy never to transfer any child to adult court; and
- Instituting a policy of presumptively seeking pre-plea restorative justice diversion for the most common charges for youth.

Diversion

Both of the diversion programs that the Merced DA provided information on are run by for-profit private companies with little transparency or public accountability. Participants are required to pay exorbitantly high fees to complete these diversion programs and all of the eligible offenses listed are so low-level that they should not even be criminally prosecuted. No diversion data was provided for 2019 and 2020, but in 2017 and 2018, the success rates for one of the two diversion programs was less than 20 percent.



The Merced DA should expand access to diversion by:

- Automatically diverting all charges on the “Diversion” list and stop criminally prosecuting low-level offenses on the “Decline-to-Charge” list;
- Ensuring all diversion is pre-filing and does not require any admission of guilt;
- Terminating all diversion contracts with private, for-profit companies, moving delivery of all diversion programs to community-based organizations, and restricting the DA and Probation Department’s role to referrals and oversight; and
- Stopping the practice of charging fees for diversion programs.

Racial Disparities

Under DA Lewis, the Merced DA’s office has begun to track racial demographic information of adults and juveniles charged by their office. Such data collection is crucial to understanding and addressing the drivers of racial disparities throughout the criminal legal system. Although Black people represent less than 4 percent of the Merced County population, 9.23 percent of all adult charges and 17 percent of all juvenile charges were filed against Black people in 2019 and 2020. Wobblers, which are offenses that prosecutors can choose to file as a felony or misdemeanor, were filed as felonies 40.2 percent of the time against white people but 49.2 percent of the time against Black people. More than 21 percent of charges filed against Black and Hispanic people received an additional sentence enhancement, compared to just 15 percent of the time for white people.

The Merced DA should limit discretionary decisions that result in racist outcomes by:

- Establishing a policy to automatically file wobblers as misdemeanors in most if not all cases
- Establishing a policy to end the use of sentence enhancements; and
- Making good on her campaign promise to annually publish key metrics on racial disparities in charging and sentencing.