IN **(JUSTICE)** in RIVERSIDE

A Case for Change and Accountability

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EXECUTIVE SUMMARY

California District Attorneys (DAs) have historically used their legal discretion to prioritize aggressive "tough-on-crime" prosecution, which has caused incarceration rates to skyrocket and destroyed lives. Even though they are elected officials, DAs are often not held accountable for these practices, in part, because their role is not well understood, and much of their work is hidden from the public.

As part of the ACLU's broader efforts to decrease incarceration and hold DAs accountable across California, this report highlights the current policies and practices of the Riverside County District Attorney's office and makes recommendations for urgent changes. First, we provide context for the role of DAs within the carceral system. Next, we explain our data collection methods, including a quantitative and qualitative analysis of internal data and records from the DA's office spanning from 2017 through 2020, and community stakeholder interviews. Our findings are presented in three core practice areas: charging, diversion, and detention. We pay particular attention to charging decisions relating to youth, the death penalty, law enforcement officials, and immigrants. Our diversion findings focus on adult and youth diversion, and our detention findings examine the DA's role in pretrial detention, parole, and resentencing. Finally, we make recommendations to Riverside DA Michael Hestrin to adopt policies and practices that would begin to address some of the harms of incarceration and structural racism within the criminal legal system. These recommendations include immediate policy changes to shrink the footprint of prosecution and incarceration. The core findings and recommendations outlined in this report include:

Key Findings and Recommendations

ADULT PROSECUTION

Key Findings:

- Only 6 percent of charges filed between 2017 and 2020 were for what are called serious or violent felonies.
- More than half (57.1 percent) of all charges filed between 2017 and 2020 were for offenses that we believe should have been diverted or never charged. Note: A "charge" is defined in the criminal legal system as a discrete offense that someone has been accused of by the prosecution. Sometimes people are charged with multiple counts of an offense. A "case" can be made up of multiple charges. For example, one person's case could be made up of three counts of grand theft and two counts of drug possession. It is our belief that between one third (33.2 percent) and one half (55.5 percent) of cases filed between 2017 and 2020 should not have been criminally charged because they only included offenses which should have been diverted or declined.

Key Recommendations:

- Direct all prosecutors to decline to charge or automatically divert all offenses that are in the ACLU of Northern California's recommended decline-to-charge and pre-file diversion lists (see Appendix B), which would reduce overall caseload by one third.
- Institute a policy to charge most, if not all, wobblers as misdemeanors instead of felonies.
- End the use of sentence enhancements.
- Publicly support state legislation to decriminalize low-level offenses, re-classify wobblers as misdemeanors, and eliminate sentence enhancements.
- Strengthen charging data collection and transparency practices, including introducing higher standards for error-detection and reduction, creating a data tracking mechanism that follows individuals from arrest to probation, publicly reporting key metrics and demographic information by using existing funding streams.

ADDRESSING RACISM AND RACIAL DISPARITIES

Key Findings

- Black people make up 7.3 percent of the overall population of Riverside, but they account for 13.9 percent of adults charged by the Riverside DA between 2017–2020.
- Black people are most likely to have felony "wobbler" charges, which can discretionarily be filed as either a misdemeanor or a felony.
- 30.1 percent of cases included at least one sentence enhancement, and Latinx, Indigenous, and Black people were more likely to receive an enhancement than white or Asian people. Black people were more than twice as likely as white people to receive a sentence enhancement for prior strikes.

Key Recommendations

- Publicly acknowledge that racial disparities exist in the jurisdiction's legal system.
- Decline to file charges where arrests are tainted with racial bias and refuse to call officers with a history of racial bias or racism to testify as witnesses.
- Require racial impact analyses prior to charging decisions.
- Commit to blind charging, which prevents prosecutors from seeing demographic information before making an initial decision on whether to charge someone with a crime.
- Undertake uniform and consistent collection, analysis, and publication of race and ethnicity data.
- Commit to using existing funding to implement policies and staff training — with community input — to address racial disparities.

YOUTH PROSECUTION

Key Findings:

- Riverside County imprisons children in state facilities at a rate that is 2.5 times higher than the state's average, according to data from the California Sentencing Institute.

Key Recommendations:

- End the adult prosecution of children.
- Publicly support state legislation to ban all transfers of juvenile cases to adult court and institute the presumption of non-carceral solutions for all youth under age 26.
- Amid California's closure of state-run youth prisons and its ban on out-of-state residential treatment programs, work transparently with community stakeholders to develop local restorative justice programs for adjudicated youth who are charged with committing serious harm.
- Use existing funding to conduct comprehensive and mandatory training on adolescent brain development and age-appropriate treatment for all juvenile court line DAs and staff.

HOLDING LAW ENFORCEMENT ACCOUNTABLE

Key Findings:

- Though law enforcement officers have killed 60 people since the current DA took office in 2015, his office has criminally charged only one officer, after initially clearing the officer of any wrongdoing.

Key Recommendations:

- Support the creation of an independent office — outside of the DA, Sheriff, local police departments, or other county actors — comprised of people with no regular contact with local law enforcement agencies to investigate and hold officers accountable for their illegal conduct. Make the findings (both the summary and investigative report) publicly available.
- Pledge to never accept law enforcement campaign contributions to reduce conflicts of interest.

DEATH PENALTY

Key Findings:

- 19 people have been sentenced to death in Riverside since the current DA took office in 2015.
- Riverside sentences individuals to death at the highest rate of any medium or large county in the state, according to The Desert Sun.

Key Recommendations:

- Immediately end efforts to intervene in the federal lethal injection lawsuit proceeding in Oklahoma.
- Establish a policy to never seek the death penalty or life without parole (LWOP) sentences and resentence everyone currently serving a death or LWOP sentence.
- Publicly support state legislation to ban the death penalty in California.

IMMIGRATION

Key Findings:

- The Riverside DA did not provide any policies or data related to charging immigrants.

Key Recommendations:

- Require that prosecutors avoid adverse immigration consequences in their charging, plea negotiations, sentencing recommendations, and post-conviction review practices.
- Establish a clear policy to never share information with immigration officials.
- Establish policies to refer undocumented survivors of certain crimes or criminal attempts to legal services organizations that can help them obtain a U or T Visa.
- Create and expand opportunities to erase old convictions for the purposes of eliminating immigration consequences once an individual completes their criminal sentence. This would allow people to seek relief to avoid immigration and other collateral consequences after a conviction.
- Conduct comprehensive and mandatory training on avoiding adverse immigration consequences with line DAs and staff.

Diversion Findings and Recommendations

ADULT DIVERSION

Key Findings:

- Only 4.2 percent of cases filed between 2017 and 2020 were referred to diversion programs.

Key Recommendations:

- Automatically divert cases when charges are included on the ACLU of Northern California's recommended decline-to-charge and pre-file diversion lists (See Appendix B)
- End all partnerships with for-profit companies serving diversion in Riverside County and instead partner with community-based nonprofits
- Transparently and collaboratively develop criteria for all diversion programs that increase opportunities for diversion without widening the net of system involvement.
- Track diversion referrals and completion by primary offense and by race for diversion access and outcome analysis.
- Create a culture within the DAs office that encourages prosecutors to seek diversion and community-based treatment alternatives instead of incarceration. Advocate for expanded state-level investment in and support of pre-plea diversion programs for felony and misdemeanor cases.
- Remove any immigration status or financial limitations on diversion opportunities.

YOUTH DIVERSION

Key Findings:

- No Riverside youth were diverted between September 2019 and June 2021.

Key Recommendations:

- Work with community stakeholders to expand the offenses for which youth can be referred to diversion without widening the net of youth involvement in the juvenile legal system.
- Decline to charge all low-level offenses on the ACLU of Northern California's recommended decline-to-charge and pre-file diversion lists (see Appendix B) and any comparable offenses in the Welfare and Institutions Code.
- Formally terminate the abusive Youth Accountability Team (YAT) program, redirect funding directly to community-based providers to administer youth diversion programs, and restrict the role of the DA's office and probation to referrals and monitoring outcomes that promote youth development and limit future system involvement.

Detention Findings and Recommendations

PRETRIAL DETENTION

Key Findings:

- Only 2.4 percent of people charged in 2020 whose cases included bail information had access to zero bail, despite the emergency zero-bail schedule adopted to fight the spread of COVID-19 in jails.
- Black people were most likely to have their bail set above $100,000 — a pattern of racial bias that held across felony cases, misdemeanor cases, serious or violent cases, and low-level cases.

Key Recommendations:

- Advocate for the continuation and expansion of a zero-bail policy and, whenever possible, charge individuals with offenses that fall on the zero-bail schedule, rather than similar charge codes that do not.
- Issue an office-wide presumption of release with the least restrictive conditions that are narrowly tailored to the individual and should not interfere with the person's role of primary caregiver or household supporter.
- Refuse to seek delays in trials and dismiss cases that are delayed beyond 18 months.
- Refuse the use of risk assessments and rely on needs assessments.

PAROLE

Key Findings:

- The Riverside DA's Office only provided the number of parole hearings that someone from the office attended and stated that it did not track whether they appeared to oppose or support release.

Key Recommendations:

- Institute a policy to only participate in the parole process to support an individual's release.

RESENTENCING

Key Findings:

- Riverside was selected as part of a statewide grant to support prosecutor-initiated resentencing, which creates opportunities to release people whose sentences no longer serve the interest of justice.

Key Recommendations:

- Adopt priority criteria for prosecutor-initiated resentencing in line with Los Angeles DA George Gascón's resentencing policy, so more people whose incarceration does not serve the interest of justice can return to their communities.
- Commit to funding resentencing work within the existing DA budget by redirecting resources away from prosecuting low-level offenses and toward evaluating currently incarcerated peoples' suitability for resentencing and release.
- Automatically expunge convictions that have been reduced or eliminated by reform laws.

INTRODUCTION

The Failure of Relying on Incarceration

If California were a country, it would have the fourth highest incarceration rate in the world, with 581 people incarcerated per 100,000.[1] Despite recent reforms, racial disparities in arrests, prosecution, and sentencing persist throughout the state. For example, according to the most recent statistics from the California Department of Corrections and Rehabilitation (CDCR), Black people represent 28 percent of the prison population,[2] despite comprising just 6 percent of the total state population.[3]

California's history of incarceration led to a landmark 2011 U.S. Supreme Court ruling that mandated the state reduce its prison population to 137.5 percent of planned capacity.[4] To reduce overcrowding, the Legislature transferred responsibility for incarcerating individuals convicted of certain nonviolent and nonserious crimes from the state to counties, a process known as realignment. Despite the state allocating more than $6 billion to counties in fiscal year 2019–20 to cover the costs incurred through realignment, a 2021 state audit of select counties found that these funds have been mismanaged and that realignment led to local jail overcrowding and a lack of adequate educational and rehabilitative opportunities.[5] Realignment also failed to adequately address the core issue of prison overcrowding. As of July 2019, 13 of the state's 35 prisons still operated above the Supreme Court-mandated cutoff.[6]

California voters sought to reduce incarceration and prison overcrowding with the passage of Proposition 47 in 2014, which reduced the penalties for certain drug and property offenses. An analysis of the release of tens of thousands of individuals due to Proposition 47 found that there was no evidence of an increase in violent crime and that recidivism rates actually declined.[7]

The COVID-19 pandemic led to numerous deadly outbreaks in carceral institutions and revealed the urgent need to continue to dramatically reduce the number of people incarcerated in jails, prisons, and other congregate institutions. This led CDCR to take more definitive actions to reduce the prison population, including expediting the release of nearly 3,500 incarcerated people in April 2020.[8] Such actions helped bring the state prison population down to 105.4 percent of design capacity by February 2021,[9] but not before 217 incarcerated people and staff died from COVID-19.[10]

While state spending on prison operations exceeds $13 billion each year,[11] the full psychological and material cost to incarcerated individuals, their families, and their communities is incalculable. With nearly half of all people released in California ending up reincarcerated within three years,[12] it is clear that the current cycle of prosecution and incarceration is not leading to individual or community wellness.[13]

The Role of District Attorneys

Every four years, each county in California elects a District Attorney. DAs hold significant power and influence within the criminal legal system. When a crime is alleged, DAs are empowered with the discretion to determine whether to bring charges, what charges to bring, what sentence enhancements to charge, and whether to pursue the death penalty. They also heavily influence whether a charged individual is directed to treatment or diversion programs and whether they are detained pretrial. DAs serve four-year terms and are not subject to term limits.

When police arrest someone, they collect evidence of any crimes that may have occurred and turn it over to the DA's office. The DA's office must review police reports and decide whether to bring criminal charges against someone, divert them to a program that may provide services and prevent recidivism, or drop the case entirely. Prosecutors are instructed to only file charges that they believe they can prove beyond a reasonable doubt,[14] but they are not required to file charges in all instances.

DAs are among the most powerful actors in the criminal legal system. It's estimated that 94 percent of cases at the state level are resolved through plea bargains,[15] a process in which DAs have substantial control and little oversight. Even when cases go to trial and are decided by a judge or jury, DAs decide what charges to bring and make recommendations for punishment.

For certain crime categories, DAs have the power to redirect individuals to diversion and treatment programs, where they can receive community-based social services to address their needs. However, diversion and treatment programs have been vastly underutilized by prosecutors and other system actors. The majority of individuals incarcerated in jails and state prisons in America today have substance dependence and addiction or mental health conditions that could be more compassionately and cost-effectively addressed with treatment, rather than incarceration.[16]

The Rise of "Progressive" Prosecutors

A number of prosecutors across the country and in California have won elections in recent years by campaigning on platforms of criminal justice reform.[17] The core pillars of these progressive platforms have included promises to address systemic racism, end mass incarceration, and hold police officers accountable for deadly use of force and misconduct.

Running on a platform of decarceration in Cook County, Ill., where Chicago is located, Kim Foxx won 72 percent of the vote in 2016 to become State's Attorney.[18] Her office re-classified retail thefts under $1,000 as misdemeanors instead of felonies, increased the use of diversion, and promoted a culture of declining to prosecute charges when there are less punitive and more effective ways to promote community health and safety. Despite fears that decreased prosecution would lead to an increase in crime, the county rates of violent crime and homicide decreased each year she was in office.

Larry Krasner won the DA race in Philadelphia, Pa. in 2017 with a platform promising to end cash bail, illegal stop-and-frisk, abuse of civil asset forfeiture, and the death penalty.[19] He instructed his attorneys to offer more lenient plea deals and decline to criminally charge certain low-level offenses related to marijuana, sex work, and retail theft. Within the first two years of his tenure, the city's jail population decreased by 33 percent without any increase in crime.[20]

Rachael Rollins was similarly elected in 2018 as the top prosecutor for Suffolk County, Mass., which includes Boston. She ran on a platform to end cash bail, pretrial detention, and the prosecution of petty, poverty-related crimes.[21] An empirical study of her office's policy to decline to charge certain nonviolent misdemeanors found that declination decreased the likelihood of future system involvement without any increase in crime rates.[22]

In San Francisco, Chesa Boudin immediately implemented a number of his campaign promises after taking office at the start of 2020. He announced a diversion program designed to keep children united with their parents and end generational cycles of incarceration, an end to cash bail, and a drastic scaling back of sentence enhancements for "Three Strikes" and gang allegations.[23] Opponents of Boudin have succeeded in instituting a recall election scheduled for June 2022.[24]

In 2020, Boudin's predecessor, George Gascón, unseated two-term incumbent Jackie Lacey to become the District Attorney of Los Angeles County. He ran on a comprehensive platform of racial justice, police accountability, ending the death penalty, expanding diversion programs, and strengthening immigration-informed prosecution.[25] On his first day in office, Gascón eliminated money bail and announced a ban on sentence enhancements.[26]

Gascón's policy changes have been met with fierce resistance from prosecutors across the state, as well as within his own office. Opponents have launched a second recall effort against Gascón.

Riverside District Attorney Michael Hestrin

Michael Hestrin was elected Riverside County District Attorney in June of 2014 and sworn in on Jan. 5, 2015. Hestrin worked as a line prosecutor in Riverside for nearly 20 years before assuming this office.[27] One of Riverside County's local newspapers, The Desert Sun, described him as "a Republican of the law-and-order variety," who is willing to invest in crime prevention programs.[28]

"The community has to see us as tough and aggressive," Hestrin told The Desert Sun. "People may think they don't want that, but trust me, when they're the victim of a crime, that's what they want — a tough, aggressive, and ethical DA's office."

Although the current DA was reelected in 2018,[29] the office has taken many positions that are out of step with Riverside voters. The DA vocally opposed both Proposition 47[30] and Proposition 57,[31] two of the most significant criminal justice reform ballot measures in recent years, despite the fact that the majority of Riverside voters supported these initiatives.[32]

According to data from the California Sentencing Institute in 2016, Riverside County has the second highest prison incarceration rate in the state.[33] Riverside sentences over 655 people to state prison per 10,000 adult felony arrests, compared to the state average of 446.[34] There are also vast racial disparities in imprisonment rates. In Riverside, Latinx residents are imprisoned at 1.6 times the rate of their white counterparts, and Black residents are imprisoned at 5.5 times the rate of white counterparts.[35] These outcomes are driven, in significant part, by the charging decisions and sentencing recommendations of the office of the DA.

Elected prosecutors across the nation are slowly shifting their practices away from failed tough-on-crime policies in response to a growing body of research and community demands for criminal justice reform. The DA should exercise the office's discretion to reorient prosecutorial practices toward decarceration, rehabilitation, and eliminating racial disparities. The DA should also publicly call on county, state, and federal elected officials to pass legislation and budgets that shrink the footprint of the criminal legal system and balance power away from prosecutors to ensure more equitable outcomes.

METHODS

On May 13, 2019 the ACLU of Northern California sent a Public Records Act (PRA) request to the Riverside DA (see Appendix A). The PRA included requests for:

- Prosecution data for 2017 and 2018, including unique case identifiers, charges, enhancements, and outcomes for all misdemeanor and felony charges filed;
- Diversion data for 2017 and 2018 and policies relating to these programs;
- Information on positions the office took in parole hearings;
- Office policies, protocols, and guidelines for prosecutors; and
- Immigration-related policies.

On July 12, 2019, the ACLU of Northern California received records from the Riverside DA in response to the PRA request.[36] Despite the initial incomplete and sometimes incomprehensible datasets (see Appendix C), we remained in correspondence until we received all possible data and clarifications from their office.

Overall, the Riverside DA's PRA responses from 2019 and 2021 included the following information:

- Prosecution data for 2017–2020 and a redacted charging handbook, including:
  - Info on 455,991 charges and 144,463 enhancements across cases filed between Jan. 1, 2017 and Dec. 31, 2020. The dataset contained anonymous case identifiers, charge codes and descriptions, sentencing enhancements, information on how a particular charge was filed, and the set bail amount. It also contained demographic information, including race, age, and gender.
  - A spreadsheet listing youth the office attempted to transfer to adult court in 2017 and 2018, but not 2019 or 2020.
  - A redacted version of their Crime Charging Standards, which was only two pages long.
- Diversion data for 2017–2020 and policies relating to these programs, including:
  - Summarized data on adult diversion programs, such as the number of referrals to Mental Health and Veterans Court, as well as Misdemeanor and Drug Diversion Court.
  - Written policies and programmatic materials related to Veterans Court, the Eligible Bad Check Diversion Program (which was terminated in 2018), and Youth Accountability Teams (which were dramatically scaled back in 2019 as the result of an ACLU lawsuit).
- Limited information on positions the office took in parole hearings, including:
  - The number of parole hearings their office attended, but no information on their positions or any related documents.

- Office policies, protocols, and guidelines for prosecutors, including:
  - The office's Brady policy — which requires prosecutors to disclose to the defense materially exculpatory evidence in their possession — and a generic charging policy, stating that they did not have any additional disclosable policies.
- No info on immigration-related policies. The office stated that it did not have disclosable immigration-related policies.

In addition to the quantitative analysis of the provided datasets and a review of all provided policies, we shared the results of our analyses with community stakeholders who have personal and professional experience regarding the impact of the Riverside DA's policies and practices. Their insights in response to our findings can be found throughout this report. Stakeholders included:

- **Vonya Quarles,** a practicing attorney and the executive director of Starting Over Inc., a nonprofit that specializes in transitional housing, community and health services, and post-conviction relief.
- **Redd Martinez,** the youth organizer at the Riverside Justice Table, a coalition of organizations working to reimagine public safety by supporting health-focused and community-centered preventative services and responses to crime rooted in restorative justice practices.
- **Jessica Aparicio,** the director of external affairs at Sigma Beta Xi (SBX) Youth & Family Services, a community-based organization working to break the cycle of poverty and violence by partnering with youth in the Inland Empire and their families.
- **Karrie Schaaf,** the mother of a young man who was arrested during a mental health crisis and has been held for over two years pre-trial without access to mental health diversion or treatment.

CHARGING DECISIONS

DAs have immense discretion to determine whether to bring charges when a crime is alleged, what charges to bring, what sentence enhancements to charge, and whether to pursue the death penalty.

The outsized influence of DAs leads to outcomes that are inconsistent, biased, and often completely unjust. DAs tremendous power must be reined in to fairly balance the legal system. In the meantime, prosecutors should use their discretion to pursue restorative justice for people harmed by crimes, as well as for those who have caused harm.

Adult Prosecution

According to its data, the Riverside DA's office filed 455,991 charges across 207,844 cases between 2017 and 2020. The number of charges and cases per year has declined over the past four years, with a sharper drop in 2020 that was likely driven by the COVID-19 pandemic.

Table 1: Total Charges and Case by Year

Year	Number of Charges	Number of Cases	% Change in Cases
2017	122,742	54,151	N/A
2018	120,491	55,218	2%
2019	109,644	51,893	-6%
2020	93,114	46,582	-10%
Total	**455,991**	**207,844**	**N/A**

The demographic data from the Riverside DA's office included six "race" categories: Asian, Black/African American, Hispanic, American Indian or Alaska Native, Native Hawaiian/Pacific Islander, and White. Only 0.2 percent of cases had their race listed as Multiple Races, Other, Unknown, or Missing, so these categories were reclassified as a single "Unknown" category for the purposes of this analysis. For standardization purposes, this report will refer to individuals categorized as Hispanic in the Riverside DA's dataset as Latinx and will refer to those categorized as Native as Indigenous.

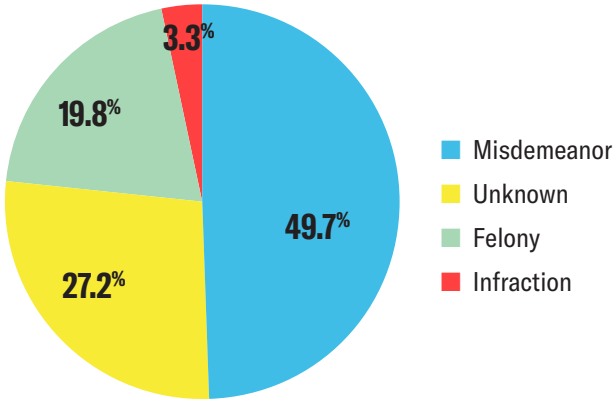
Because the DA's data does not differentiate between race and ethnicity, it is difficult to compare the incarceration rates of Latinx residents to the county population overall. Almost half of all cases (48.8 percent) were filed against Latinx people and nearly a third (32.3 percent) were filed against white people. According to U.S. Census data, 50 percent of Riverside County is Latinx, and 34 percent is non-Latinx white.[37] Although those figures appear to be roughly proportionate, Latinx and white are not mutually exclusive categories, making an analysis of racial disparities in charging rates impossible for white and Latinx residents.

The racial disparities among other racial groups are much more pronounced. Black people account for just 7.3 percent of the population of Riverside County, but comprised 13.9 percent of the people charged by the Riverside DA between 2017 and 2020. Asian people[38] make up 7.2 percent of the county's population, but only accounted for 1 percent of all cases filed by the DA. Native Hawaiians and Pacific Islanders account for less than half a percent of the county population (0.4 percent), but they were 3.4 percent of all people charged by the DA across this period. Indigenous (Native) people are 2 percent of the county population and less than half a percent of those charged by the DA (0.4 percent). Pacific Islanders are charged at a rate 53 times higher than Asian people, and Black residents are charged at a rate 14 times higher.

Table 2: Racial Disparities in Criminal Cases Filed by Riverside DA

Race/Ethnicity	Percent of Crminal Cases	Percent of Riverside County
Asian	1.0%	7.2%
Black	13.9%	7.3%
Latinx	48.8%	50.0%
Indigenous	0.4%	2.0%
Pacific Islander	3.4%	0.4%
White	32.3%	34.1%

Figure 1: Charge Type Percentages, 2017–2020



FELONIES, MISDEMEANORS, AND WOBBLERS

The charging dataset provided by the Riverside DA included information on how a particular charge was filed. Most charges are defined in state law as either a felony, misdemeanor, or infraction, but certain "wobbler" charges can be filed as either a misdemeanor or felony, at the prosecutor's discretion. There were nearly 145,000 (144,463) sentence enhancement allegations and we completed a separate analysis of sentence enhancements. For the purposes of this analysis, we analyzed charges that were listed as felonies, misdemeanors, or infractions, excluded enhancements and recategorized all ambiguous or empty fields as "Unknown." Due to poor data practices, more than a quarter (27.2 percent) of offenses had ambiguous or missing charge types.

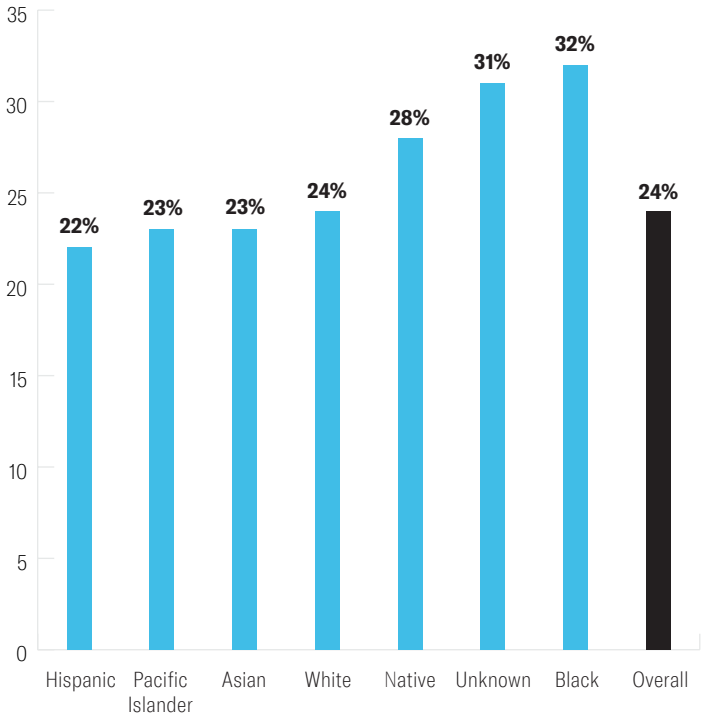
Roughly half of all charges (49.7 percent) filed between 2017 and 2020 were misdemeanors. Felony charges represented 19.8 percent of charges, infractions were 3.3 percent, and the remaining 27.2 percent were unknown. The percent of unknown charges decreased steadily over the four-year period, dropping from 32.1 percent in 2017 down to 17.9 percent in 2020. As data practices apparently improved, the ratio of felony to misdemeanor charges remained relatively constant, and in 2020 roughly a quarter (24.7 percent) of charges were filed as felonies, 55.3 percent as misdemeanors, 2.1 percent as infractions, and 17.9 percent as unknown (see Figure 1).

At the case level, only 20.7 percent of cases included at least one felony charge. Roughly one quarter of Indigenous, Black, and Pacific Islanders are charged with felony cases, higher than the percentages of white (18.8) and Asian (19.8) people charged with felony cases. These differences may be driven in part by discretionary choices made by prosecutors over whether to file a "wobbler" as a felony or a misdemeanor.

Research shows that the discretion to file wobblers more or less punitively has led to significant racial disparities in sentencing. In California, Black people are significantly more likely to receive third strike sentences due to wobblers being charged as felonies, rather than misdemeanors.[39] The passage of Proposition 47 in 2014 eliminated some of this prosecutorial discretion by reclassifying a number of wobblers as misdemeanors. Researchers found that exclusively charging those wobblers as misdemeanors led to a substantial decrease in racial disparities.[40] Racial disparities for felony drug offenses declined by nearly half. Some of the most common charges in Riverside that are still classified as wobblers are making criminal threats, burglary, and forgery.

Overall, 30.5 percent of charges filed by the DA were wobblers, and 24.2 percent of wobblers that could have been filed as misdemeanors were filed as felonies. Black and Unknown people were much more likely to have their wobbler charges filed as felonies (31.5 percent and 30.6 percent), compared to Latinx (22.2 percent) Asian (23.5 percent) and white people (23.9 percent.)

Figure 2: Percent of Wobblers Charged as Felonies, 2017–2020



If the Riverside DA had filed all wobbler charges as misdemeanors, the percent of cases that include at least one felony would have dropped by a third from 21 percent down to 14 percent. Although Black people are most likely to have their wobblers charged as felonies, they were the least likely to be charged with a wobbler in the first place and would not have seen an above-average decrease in felony cases. Adopting a policy to file all wobblers as misdemeanors would remove opportunities for unconscious bias and reduce unnecessarily harsh punishment for all racial groups, but it may not close racial disparities in felony cases.

LOW-LEVEL CHARGES

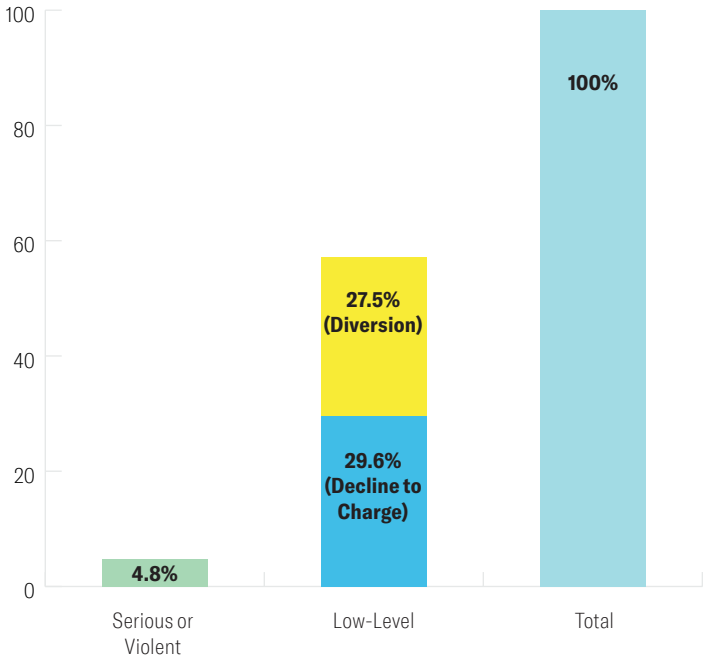
A large and growing body of evidence demonstrates the harmful impact that formal contact with the criminal legal system can have on an individual's life and the benefits of moving many low-level charges out of the criminal legal system.[41] For example, a 2021 study of charging practices under the Suffolk County District Attorney's Office in Massachusetts found that declining to charge a set of low-level nonviolent misdemeanors reduced the likelihood of future criminal justice involvement with no increase in local crime rates.[42] Diverting and declining to charge low-level crimes would also allow all criminal legal system actors to spend less time and fewer resources on crimes that do not involve real risks to public safety.

Fifty-seven percent of all known charges[43] filed by the Riverside DA between 2017 and 2020 were charges that the ACLU believes that DAs should decline to charge or divert (see Appendix B for the complete list), such as possession of drug paraphernalia, driving with a suspended license, or possession of a controlled substance. Thirty percent of known charges fall on the ACLU of Northern California's decline-to-charge list and are so low-level that we hold that they should have never been criminally prosecuted. Another 28 percent of the low-level charges were on the ACLU of Northern California's diversion list and could have been more effectively and efficiently addressed through community-based programming.

Low-Level Charge Type	Frequency	Percent of All Known Charges
Decline to Charge	105,542	29.6%
Automatic Diversion	97,942	27.5%
Total Low-Level	**203,484**	**57.1%**

Despite the rhetoric of the DA's office about targeting violent crimes, just 6 percent of all known[44] charges filed by the Riverside DA's office from 2017–2020 were classified as serious or violent felonies under California state law. The most common serious or violent felonies filed in Riverside are threats to injure (PC 422), second degree burglary (PC 459), and robbery (PC 211).

Figure 3: Percent of Charges That Are Serious or Violent and Low-Level, 2017–2020



The five most common reported charges filed between 2017 and 2020 were all low-level misdemeanors. The most common low-level charges filed in Riverside are for DUIs, possession of drugs or drug paraphernalia, driving with a suspended license, and petty theft, all of which, we believe, should be diverted or never charged. These five most common charges account for 18.8 percent of all charges filed.

The significant portion of charges with a missing charge code presents a challenge to a comprehensive case-level analysis of low-level charges. Overall, somewhere between 33.2 and 55.5 percent of cases filed by the Riverside DA between 2017 and 2020 were entirely made up of low-level charges. If one assumes that all missing charge codes represent low-level charges, then 55.5 percent of all cases would be low-level. If one assumes that none of the missing charge codes are low-level, then 33.2 percent of cases would be entirely low-level. The true figure is likely somewhere in between the two, but in either case adopting the ACLU of Northern California's low-level policy would significantly reduce the Riverside DA's caseload, freeing up public funds — from the DA and other legal system actors — that could be reinvested in community-based diversion and social service programs.

SENTENCE ENHANCEMENTS

The Riverside DA's office clarified that "Allegation" charges refer to sentence enhancements, which increase the severity or length of a person's sentence. Enhancements, which can add a decade or more to a person's prison term, have played a significant role in prison overcrowding and have disproportionately impacted people of color.

Nearly 80 percent of people incarcerated in California state prisons have been affected by a sentence enhancement, and over a quarter had three or more.[45] However, research shows that the

Table 3: Top 5 Most Common Charges, 2017–2020

Description	Charge Code	Charge Type	Recommendation	% Cases That Include This Charge
DUI	VC 23152(a)/(b)	Misdemeanor	Diversion	14.1
Possession of drug paraphernalia	HS 11364	Misdemeanor	Decline to charge	10.2
Driving with suspended license	VC 14601	Misdemeanor	Decline to charge	9.9
Possession of meth	HS 11377	Misdemeanor	Decline to charge	8.7
Petty theft	PC 488, PC 484	Misdemeanor	Diversion	4.8

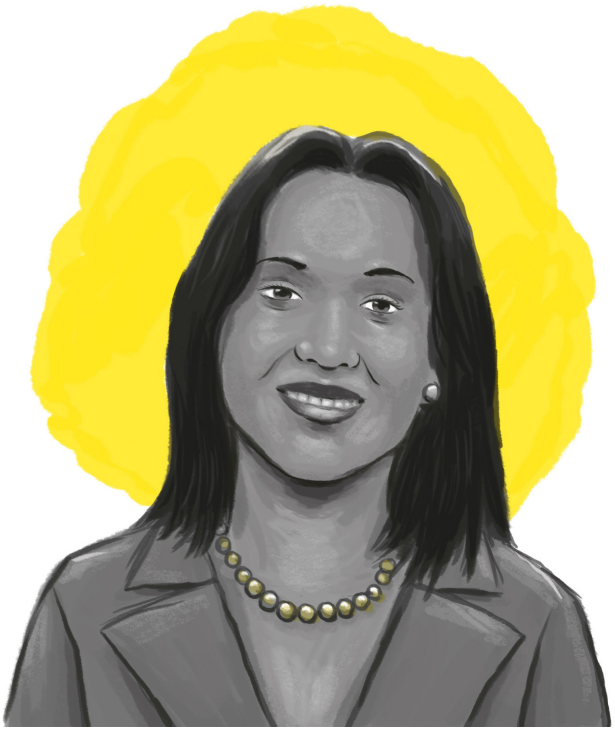
marginal deterrent effect of sentence enhancements on already lengthy prison sentences is modest at best.[46] Longer sentences also have diminishing returns to public safety because individuals are less likely to commit crimes at older ages and incarceration diverts resources from community-based programs and policy initiatives that hold the potential for greater impact on community safety.[47]

With respect to sentence enhancements, the Riverside DA's charging policy handbook reads:

> *"Special Allegations: The charging prosecutor shall be fully familiar with and should allege in charging documents all appropriate allegations. These include specific enhancements, probation limitations and prohibitions, prior convictions, out on bail allegations, as well as any allegation that affects the nature of a conviction or judgment."*

This guidance appears to instruct line prosecutors to file all possible sentence enhancements, and indeed 30.2 percent of cases include at least one enhancement. Between 2017 and the end of 2020 the Riverside DA filed nearly 150,000 sentence enhancements. Latinx people are most likely to receive an enhancement, with 31.8 percent of cases filed against Latinx people including at least one enhancement, compared to 29.5 percent of Black people, 28.1 percent of white people, and 23.1 percent of cases filed against Asian people.

> "I think Riverside goes for any enhancements they can get and all the enhancements they can get. It signals that the light at the end of the tunnel isn't about justice, it's about how much time you can give someone for a particular crime."
>
> — *Vonya Quarles, Starting Over Inc.*



The most common enhancement was for violating the terms of probation. Over 8 percent of cases included an enhancement for probation violations, but that does not necessarily mean that an individual committed a new offense. Violations of probation can include failure to pay court-ordered fines, fees, and restitution or failure to appear at a required court hearing or meeting with a probation officer.

The next most common charge types classified as enhancements by the Riverside DA appear to refer to two evidence codes through which the DA can petition the court to allow the introduction of evidence that is normally inadmissible. A "Notice of 1109" appears to refer to Evidence Code section 1109, which allows the prosecution to introduce evidence that a person previously committed an act of domestic violence in order to prove that they committed the act of domestic violence for which they are being charged.[48] Although such "propensity evidence" is typically inadmissible because it can unfairly bias the court, Section 1109 allows prosecutors to admit evidence of police showing up in response to a report of domestic violence, even if a person was never arrested or found guilty of a previous crime. A "Notice of 1370" appears to refer to Evidence Code section 1370, which allows for

the admission of hearsay if it describes a defendant threatening to injure another person.[49] In almost all instances (99 percent), if a person was charged with a "Notice of 1109" they were also charged with a "Notice of 1370."

One of the five most common enhancements between 2017 and 2020 was an additional year added to the sentences of people who had previously served prison or jail terms (PC 667.5(b)). This enhancement has since been repealed by the state Legislature, effective Jan. 1, 2020.[50] Legislators banned the use of sentence enhancements for prison priors because it "re-punishes people for previous jail or prison time served instead of the actual crime when convicted of a non-violent felony" and it "exacerbates existing racial and socio-economic disparities in our criminal justice system."[51] The Riverside DA charged 6,850 enhancements for prison priors in 2017, 6,888 in 2018, 4,844 in 2019 and 16 in 2020, despite the fact that they were outlawed at the start of that year.

Table 4: Most Common Enhancements, 2017–2020

Charge Code	Description	% All Cases
VOP	Violation of probation	8.3
Notice of 1109 and Notice of 1370	Use of propensity evidence and use of hearsay	7.8
VC 23578	DUI enhancement	5.8
PC 667.5(b)	Prior prison commitment	3.6
VC Prior	Prior vehicle code convictions	3.4

There were also stark racial disparities in the addition of sentence enhancement for prior strikes. Black people were more than twice as likely as white people to receive a sentence enhancement for prior strikes. Seven percent of cases against Black people included at least one enhancement for strike priors, as compared to 3.9 percent for Latinx people and 3.4 percent for White people. Re-punishing people for criminal records that are inherently tied to racial disparities in policing, charging, plea negotiations, and sentencing only serves to deepen those racist outcomes. Anecdotally, prosecutors sometimes offer youth plea bargains in which they can immediately go free, in exchange for pleading to a strike. Many youth agree to such an offer, but if they ever come back into contact with the criminal legal system — a scenario that is particularly likely for people of color living in overpoliced communities — they can be charged with an enhancement for that strike prior and face an additional five years in prison. If a prosecutor is willing to let a young person immediately return to the community, it is a strong signal that they do not believe that person is a threat to community safety. The practice of youth strike pleas systematically stacks the deck against people who have historically been overpoliced and overcharged, particularly when such practices serve no community safety interest.

Although they are not the most frequently charged enhancements, the Riverside DA's office charged 1,151 gang enhancements in 356 cases between 2017–2020. Gang enhancements (PC 186.22) have come under increased scrutiny in recent years for their role in driving incarceration and exacerbating racial disparities in the criminal legal system. These enhancements, ranging from an additional two years to life, continue to be routinely imposed on predominantly Latinx and Black people, despite the fact that there is little to no evidence that gang enhancements reduce crime.[52] More than 90 percent of people serving gang enhancements in California prisons in 2019 are Black or Latinx,[53] and 93 percent of gang cases in Riverside were charged to Black or Latinx people.

According to Fordham Law Professor John Pfaff, who studies the causes and effects of incarceration, "Long sentences imposed by strike laws and gang enhancements provide little additional deterrence, often incapacitate long past what is required by public safety, impose serious and avoidable financial and public health costs in the process, and may even lead to greater rates of reoffending in the long run."[54]

Youth Prosecution

Harsh sentencing for youth is unnecessary for a multitude of reasons. First, they will grow to have substantially more self-regulatory capacity in just a few years.[55] It is also counterproductive, as imprisonment is associated with worse outcomes for youth.[56] However, Riverside County imprisons youth at a rate 2.5 times the state average, according to the California Sentencing Institute.[57]

Decades of research has found no evidence of any deterrent effect of transferring minors into the adult criminal legal system, and in fact, youth who are tried as adults are more likely to be charged with a future crime than youth adjudicated in the juvenile system.[58] Because the part of the brain directly related to the ability to understand choices and consequences does not fully develop until the mid-twenties, some researchers have suggested raising the age of criminal responsibility to between 21 and 26 years old.[59] In addition to advocating for statutory changes to raise the age of adult prosecution, the Riverside DA should institute a presumption of non-incarceration for all youth under the age of 26.

Prosecutors must have a deep understanding of adolescent development in order to pursue appropriate responses to harm. The introduction of developmental science into the U.S. Supreme Court's deliberations about the appropriate sentencing of criminally charged youth has had a substantial impact on the Court's rulings over the past two decades.[60] Additionally, the California Penal Code expressly acknowledges "the diminished culpability of youth as compared to adults."[61]

The passage of Proposition 57 in 2016 also shifted much discretion over whether to prosecute youth under 18 in adult court from DAs to juvenile court judges. Prior to the implementation of Proposition 57, Riverside filed juvenile cases in adult court at 2.6 times the rate of the rest of the state.[62] Within the county, Latinx youth were direct-filed (prosecuted in adult court) at 8.6 times the rate of their white counterparts, and Black youth were direct-filed at 4.3 times the rate of white counterparts.[63] California Department of Justice data compiled by the W. Haywood Burns Institute shows that in 2017, the year that Proposition 57 was implemented, the number of Riverside youths tried in adult court dropped by 83 percent, after remaining relatively constant in the years leading up to the policy change.[64]

Even after the passage of Proposition 57, which the majority of Riverside voters approved[65] the Riverside DA office continued to direct-file juveniles in adult court.[66] In December 2016, their office had 57 pending juvenile cases that had been directly filed in adult court. As public defenders began to request hearings to transfer those cases back to juvenile courts, the Riverside DA attempted to argue that Proposition 57 should not be applied retroactively. An appeals court disagreed and allowed for fitness hearings to take place so juvenile court judges could determine which court to try the cases in.[67]

Despite Proposition 57 and the evidence that youth outcomes are better when their cases are handled in juvenile court, data from the Riverside DA's office shows that they attempted to file 29 youth cases in adult court in 2017 and 15 in 2018. Although the data is incomplete, 13 of the 44 total cases were classified as felonies and 31 as misdemeanors. The DA's office did not provide data on transfers to adult court for 2019 and 2020.

In 2018, the state legislature passed SB 1391, which eliminated prosecutors' ability to seek transfer hearings for 14- and 15-year-olds, effectively raising the minimum age a child can be tried as an adult from 14 to 16.[68] Again, the Riverside DA flouted the law and continued to transfer a 15-year-old to adult court after this law went into effect. A county Superior Court prevented the DA from transferring this youth to adult court.[69]

Aside from being tried as an adult, the most severe punishment for adjudicated youth is being committed to the Department of Juvenile Justice (DJJ), California's youth prison system. Riverside County commits youth to DJJ at 2.7 times the rate of California as a whole.[70] There are also massive racial disparities in DJJ commitment in Riverside County. For every white youth committed to DJJ, there are 83 Black youth committed and 19 Latinx youth committed.[71] As of June 2020, there were 50 youth serving DJJ commitments from Riverside County.[72] In 2017, eight Riverside youth were sentenced to the DJJ, and 14 were sentenced to DJJ in 2018. Data on DJJ commitments was not available for 2019 and 2020.

In 2020, Gov. Gavin Newsom signed SB 823, which mandates that DJJ end most youth admissions by July 1, 2021, and permanently close by June 30, 2023.[73] The county is currently developing plans to determine how to house Riverside youth who are currently incarcerated at DJJ. With the passage of the 2021 state budget, California also outlawed sending adjudicated youth to out-of-state treatment placements after revelations about widespread abuse at such facilities.[74] A crucial element of successfully implementing the closure of DJJ and the ban on out-of-state placements will be to ensure that youth aren't simply funneled into the more punitive adult system. All local placements should be designed in partnership with community stakeholders to prioritize healing and successful reentry.

Holding Law Enforcement Accountable

Police killings of civilians is at the center of a long and heated national debate about race, state power, and accountability. Despite the DA's office's otherwise aggressive prosecution of low-level crimes, the office of the DA has repeatedly failed to adequately hold law enforcement officers responsible for their illegal conduct. The current Riverside DA received more campaign contributions from law enforcement than any other prosecutor in the country. According to a study from the University of North Carolina School of Law, 30 percent of the current DA's campaign funds in 2014 came from law enforcement sources, and preliminary data from the 2018 election shows a similar pattern.[75] The current DA received $149,300 in campaign contributions from law enforcement, far outpacing the $40,534 that was given to the DA with the second largest amount of law enforcement contributions. The Riverside DA must immediately pledge to not accept campaign contributions from law enforcement in order to reduce the conflict of interest this inherently poses when law enforcement kill unarmed civilians or otherwise abuse their power.

MURDERS BY POLICE OFFICERS

Since DA Hestrin took office in 2015, at least 60 people have been killed by law enforcement officers in Riverside County.[76] At least six were experiencing mental health crises at the time of their death. Only a single law enforcement official has been charged in connection with any of these killings, and the DA initially declined to file charges against that officer.[77]

In 2014, Oscar Rodriguez, the only law enforcement official to be charged by Hestrin, used the guise of his official capacity as a Riverside County sheriff's deputy to deliver a warrant to Juan Carlos Morin, the father of his girlfriend's children.[78] Rodriguez shot Morin, did not seek immediate medical attention, and Morin died from his injuries. Hestrin initially reviewed the incident and determined that the shooting was justified. After Morin's family filed a wrongful death lawsuit, which was settled for $6.95 million, their investigation exposed evidence that Rodriguez knew and targeted Morin. In 2017, the Riverside

DA's office reopened the case and a grand jury indicted Rodriguez on second degree murder charges. Rodriguez is awaiting trial and was released from custody after posting $1 million bail. "Based on additional information, we realized this was not an officer-involved shooting review, it was a murder investigation," said Hestrin.[79]

In cases that the Riverside DA's office classifies as "officer-involved shooting reviews," they have never filed charges against a single officer. In 2019, Kenneth French, an individual diagnosed with schizophrenia, was in a Riverside County Costco with his parents. He suddenly and spontaneously shoved Salvador Sanchez, an off-duty Los Angeles Police Department officer who was holding his child.[80] French's father intervened to pull his son back, but Sanchez immediately opened fire, shooting French four times and killing him. Sanchez also shot both of French's parents, which resulted in French's father losing a kidney. Instead of immediately filing criminal charges, DA Hestrin chose to defer to a grand jury. Grand jury hearings are typically "dominated entirely by prosecutors who present one-sided, highly curated versions of events."[81] The grand jury did not get the votes needed to bring an indictment, and Sanchez was never criminally charged.

> "We don't see a District Attorney that has the courage to stand up to other arms of government that are creating harm. When I think about the District Attorney's role and responsibility and the dedication to justice, I don't think that there should be lines drawn about who is subject to justice and who isn't."
>
> — *Vonya Quarles, Starting Over Inc.*

Although Sanchez was off duty at the time, Hestrin stated that, "This is viewed as an officer-involved shooting. Police officers have to respond (to an attack) as if they're on duty." However, the LAPD found that Sanchez's actions were unreasonable and violated their department's rules for use of lethal force, and he was fired.[82] "They were moving away from this officer," said French's younger brother Kevin. "None of them were posing an imminent threat… DA Hestrin is giving someone with a badge a permit to shoot without consequences or accountability."[83]

Given Hestrin's inaction, on Aug. 9, 2021, California Attorney General Rob Bonta's office announced that they filed felony manslaughter charges against Sanchez, who has since been arrested.[84]

INVESTIGATING USE OF FORCE

In 2020, law enforcement departments in Riverside County reported to the California Department of Justice 49 incidents of police use of force that resulted in great bodily injury or death — the third highest number of any county in the state.[85] In July 2020, the Riverside County Board of Supervisors passed a resolution that law enforcement agencies in Riverside will no longer investigate their own officers' shootings.[86] However, the "outside" investigators available are the DA's office, the sheriff's office, or another Riverside police department. All of these offices have inherent conflicts of interest in investigating officer-involved shootings, as they regularly and closely collaborate with one another.

> "I definitely don't think that murders from the sheriff's department or police departments in Riverside County should be looked at by DA Hestrin, especially with his track record. There hasn't been any type of accountability for those murders in Riverside."
>
> — *Redd Martinez, Justice Table*

IN-CUSTODY DEATHS

The California Department of Justice tracks information about in-custody deaths across the state. Forty-two percent of all in-custody deaths statewide are determined to be "natural," 10 percent are considered suicide, and 10 percent are categorized as "homicide justified (law enforcement)."[87]

Between 2005 and 2019, 40 percent of people who died in custody or in the process of arrest by the Riverside Sheriff's Department had their deaths classified as homicide justified (law enforcement).[88] This is the highest percentage of any sheriff's department in California. Statewide across this same period, 16 percent of people who died in custody or in the process of arrest by a sheriff's department were killed in a "justified homicide."[89]

One instance of a brutal in-custody death ruled "justified homicide" was that of Phillip Garcia. In 2017, Phillip Garcia was arrested while experiencing a mental health crisis.[90] He was placed in a sobering tank, denied proper medical treatment for his psychosis, and then sheriff's deputies falsified jail logs and reports about the amount of force used to subdue Garcia. After struggling for hours to free himself from restraints, he died from rhabdomyolysis, a disorder caused by overexertion, where toxins released by overuse of muscles lead to kidney failure. His death was ruled a homicide by the coroner. The family sued Riverside County for wrongful death, and it was settled pretrial for $975,000. No one within the sheriff's department was disciplined, no charges were filed by the DA, and no procedures were changed, according to ProPublica's reporting.

The high rate and frequency of deaths and great bodily injury at the hands of Riverside law enforcement is deeply troubling, and DA Hestrin's office should support the development of an independent body that can investigate all instances of potential misconduct or criminal activity.

Death Penalty

Riverside County represents 6 percent of the state's population but has sentenced 13 percent of all people currently facing the death penalty in California.[91] As of 2019, Riverside sentenced individuals to death at a rate higher than any other large- or medium-sized county with a population over 200,000.[92] There are currently 89 individuals on death row who were convicted in Riverside County.[93]

Nineteen people have been sentenced to death since the current DA took office in 2015.[94] This is the highest number of any prosecutor in the country. Black and Latinx people are disproportionately sentenced to death in Riverside County, and across the state as a whole.[95] The following chart shows the racial breakdown of those 19 individuals, as compared to the racial demographics of Riverside County.

Table 5: Racial and Ethnic Disparities in Riverside Death Sentences

Race/Ethnicity	Number Sentenced to Death	Percent Sentenced to Death	Riverside County Demographics
Asian	1	5.3%	7.2%
Black	3	15.8%	7.3%
Latinx	13	68.4%	50.0%
White	2	10.5%	34.1%

In 2019, Gov. Newsom signed an executive order placing a moratorium on executions in the state of California. The people on death row suspended a years-long constitutional challenge to the state's execution process, with the agreement that the case would resume if the moratorium were ever lifted. However, Riverside DA Hestrin and the DAs from San Bernardino and San Mateo attempted to intervene with this federal lawsuit and overturn the moratorium on executions in the state.[96]

A federal judge denied the three DA's offices' request, finding that they failed to establish separate interests not adequately represented by the California Attorney General's office.[97] The DAs are currently attempting to appeal this decision.

In March 2021, the ACLU of Northern California, Starting Over Inc., the Riverside chapter of All of Us or None, and other partners asked a California Court of Appeal to block these DA's offices from intervening in death penalty litigation that is beyond the scope of their mandate.

"We have a new crop of progressive district attorneys in California who are working to change policies that have led to the over incarceration of Black and Indigenous people and other people of color," said Rev. Samuel Casey, executive director of Congregations Organized for Prophetic Engagement, one of the community organizations petitioning the court alongside the ACLU. "It's not surprising that the old guard is digging in their heels and fighting to defend the policies of yesterday — harsh sentences, and more Black and Brown people locked up for longer. Not on our watch."[98]

While the court rejected the ACLU and others' challenge without explanation[99] and DA Hestrin disputed it as "frivolous,"[100] California law makes it clear that the Attorney General is responsible for defending the state's interest when a private party files a lawsuit against the state. The DAs from Riverside, San Bernardino and San Mateo are spending significant amounts of time and resources to go beyond the scope of their legal mandate in an attempt to bypass the law and fast-track executions.

Immigration Consequences

More than one in five Riverside residents was born outside the U.S.[101] Given the composition of Riverside, it's vital that the Riverside DA's office prioritize examining the immigration consequences of its policies and practices. Certain criminal convictions can result in immigrants being placed in removal proceedings and deported, and defense counsel are legally obligated to advise noncitizens of potential immigration consequences.[102]

While it usually is more favorable to avoid jail time or get the shortest sentence possible in plea bargain negotiations, this may not be the best decision from an immigration standpoint. Because the immigration consequences of a criminal offense may be much more serious than the criminal consequences, immigrants may be advised to accept longer jail sentences or more serious criminal consequences in order to avoid immigration consequences. California Penal Code 1473.7 allows an individual to vacate a past conviction if they failed to meaningfully understand, knowingly accept, or defend against adverse immigration consequences that a conviction would have against them.[103]

California Penal Code 1016.3(b) requires prosecutors to "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 Public Records Act request seeking "records that refer to office efforts to implement its obligations under PC 1016.3(b)," the Riverside DA's office reported that they have no responsive documents that aren't exempt from disclosure.

The Riverside DA's office should publicly share their internal policies to ensure that the immigration consequences of criminal charges are mitigated, whenever possible. This should reflect comprehensive steps to take immigration consequences into account in charging decisions and plea negotiations. The DA's office should also have policies to carefully protect the identities of defendants and survivors and provide opportunities to vacate past convictions that could lead to adverse immigration consequences.

DIVERSION PRACTICES

Diversion programs include treatment classes, group therapy sessions, and any other programs that may take the place of prison or jail time in a sentence or plea offer. Ranging from loosely structured to highly regimented, these programs can also have varying degrees of oversight and influence by the Riverside DA.

Pre-plea diversion programs generally aim to reduce incarceration and recidivism while providing services to individuals who would otherwise face criminal charges. However, decades of research shows that diversion can sometimes increase the number of individuals who are controlled by the criminal legal system.[104] Such "net widening" can happen when diversion programs formally engage individuals who would not otherwise be criminally charged.

For example, let's consider a program that intervenes in an adult or juvenile legal system that usually criminally prosecutes 1,000 individuals. A true diversion program could direct 300 of those people into an alternative program, reducing the number of people who are criminally prosecuted to 700. However, a program that serves 300 people who would not have been part of that original 1,000, leading the system to process 1,300 individuals, would be a net-widening diversion program. Because research has shown that focusing diversion resources on people who have committed a low-level crime for the first time is more likely to lead to net widening, we recommend that the Riverside DA's office develop a comprehensive and evidence-based framework to ensure that only cases that have caused direct harm and would otherwise be filed in criminal court be referred to diversion. Low-level crimes on the ACLU of Northern California's decline-to-charge list, for example, should not be diverted, because formal contact with the legal system in such low-level cases can lead to an increased risk of future systems involvement.[105]

Adult Diversion

The Riverside DA provided records related to their adult diversion programs, which they define as "those where prosecution of an offense is postponed either temporarily or permanently, without a requirement of an admission of guilt by the divertee, and subject to the divertee's satisfactory performance during the diversion period." If an individual successfully completes pretrial diversion, the charges are either not filed or dismissed.

The Riverside DA provided summaries of the number of people diverted through four main programs: drug diversion, misdemeanor diversion, mental health diversion, and military diversion. These tables included the number of people referred to assessments of their competency to stand trial, but those totals were excluded from this analysis because the outcome of that analysis simply delays criminal prosecution, instead of offering access to rehabilitative diversion programs. The tables also included totals of the number of people who completed or failed to complete diversion programs each year, but it is not possible to calculate completion rates because people who completed diversion in a given year may have been referred to it in previous years. The diversion data provided did not include any information on race, precluding a racial analysis of access to diversion in Riverside County.

While not all of these referrals to diversion programs or alternate courts likely resulted in actual diversion, the small number of people able to access diversion proceedings speaks to the vast underutilization of existing programs. Between 2017 and 2020, only 4.2 percent of cases were referred

to any type of diversion. However, the number of cases referred to the four diversion programs varied greatly across years. For example, over 2,000 people were referred to diversion in 2017, but that number dropped below 500 in 2018 and rose again to over 3,700 in 2019.

Table 6: Total Number of People Referred to Diversion or Alternate Courts, 2017–2020

Year	Felony Cases Referred	Misdemeanor Cases Referred	Total Cases Referred	Percent of Total Cases Referred
2017	330	1,860	2,190	4.0
2018	108	372	480	0.9
2019	1,579	2,186	3,765	7.2
2020	975	1,240	2,215	4.8
Total	**2,992**	**5,658**	**8,650**	**4.2**

MENTAL HEALTH DIVERSION

Large fluctuations in the number of people referred to mental health court is a main driver of the overall variation described in the table above. The number of people referred to mental health court dropped from 444 in 2017 down to just 142 in 2018 before jumping up to 1,905 in 2019 and 1,105 in 2020. Despite the increase in mental health referrals in 2019 and 2020, no more than 4.2 percent of cases were ever referred to mental health court in a single year. This is deeply concerning, given that 47 percent of people in Riverside County jails suffer from mental illness and 10–15 percent are considered seriously mentally ill.[106]

> "I went to the hospital begging for medical treatment, and they made the police come. … I did not want the police involved because I didn't want my son killed. They just took my son from me anyways. … He's not a criminal, he's not violent. He just needs help, and our system has failed him. There's too many gaps in the mental health service. Then, they said, 'Okay, we're going to go towards mental health diversion.' So I still had hope. I'm like, 'Okay, I looked into the diversion program. This is great. He'll do all this. My son's not a criminal.'
>
> Then they denied mental health diversion. Every person that is skilled in mental health that should make determinations on if someone is qualified or if someone is mentally ill, they all said yes. But the person who makes the decisions, the DA's office, they don't have any training on mental health."
>
> *— Karrie Schaaf, mother of a son arrested during a mental health crisis*

The Riverside DA should improve access to pre-plea diversion by working with community health organizations to transparently establish eligibility criteria for each program. Although the Riverside DA's office only shared eligibility criteria for diversion referrals through Veterans Court, that criteria presumptively excludes broad categories of individuals who could benefit from diversion. For example, people with certain priors — like gang enhancements — are presumptively deemed unsuitable for diversion, regardless of the offense for which they are currently accused. Prior offenses for which a person has already completed their sentence should not categorically exclude anyone from receiving services and supports that may better address their needs. Criteria for all diversion programs should be evidence-based, whenever possible, and should be developed transparently in partnership with experts who are not law enforcement. The DA must also improve diversion data collection by tracking diversion referrals and completion rates that include demographic data and primary charges in order to understand and improve access and outcomes.

Youth Diversion

The Riverside DA's office provided dozens of documents related to the Youth Accountability Team (YAT) program, a juvenile diversion program that involves the Probation Department, staff from the District Attorney's office, law enforcement personnel, and community-based organizations.

In July 2018, the ACLU joined several organizations in filing a class action lawsuit against the County of Riverside for violating young people's constitutional rights throughout the YAT program. The lawsuit alleged that the YAT program unconstitutionally violated young people's rights with oppressive tactics such as surprise searches, unannounced home visitations, and restrictions on who participants could speak to.

The lawsuit further documented the ways in which the YAT program criminalized adolescent behavior and trapped youth of color in the probation system. To prevent this net-widening, the settlement mandates that the county can no longer enroll juveniles in the probation program for adolescent, non-criminal behavior such as talking back to school officials, truancy, or academic problems.[107]

> "Any youth with a misdemeanor shouldn't be put in juvenile hall. They should be taken into diversion programs. Those diversion programs would not include probation. Those diversion programs would include community-based organizations.
>
> We want youth to be in the community. We want youth to be helped by the community. … Probation just watches and makes sure that they're out of trouble, but as community-based organizations, we feel like we can give them actual opportunities."
>
> *— Redd Martinez, Justice Table*

Prior to the settlement, the YAT program reported working with 60,620 youth between 2001 and 2017. In 2017, the DA referred 138 youth to the YAT program, 110 of whom were accepted. The settlement went into effect in July of 2019, and the county temporarily suspended the YAT program on Sept. 30, 2019. The program resumed in July 2020 under the conditions mandated by the settlement. Yet since June 2021, no youth whatsoever have been enrolled in YAT.[108]

The settlement's banning of YAT's net-widening practices, along with the COVID-19 pandemic, are both likely responsible for the vast majority of this decline in referrals. Yet it is unclear why there are currently no youth at all in the program. It is possible that there are no youth who qualify for diversion, or it is possible that the Riverside DA's office is prosecuting youth in juvenile court instead of diverting them.

For youth as well as adults, diversion criteria should only provide alternatives to individuals who would otherwise be incarcerated. A 2021 study concluded that future system involvement could be avoided by declining to charge adults with low-level nonviolent misdemeanors and noted that these effects were largest for first-time defendants.[109] Because contact with the juvenile system is likely to be a young person's first interaction with the formal legal system and they are at a higher risk of future system involvement,[110] there may be additional benefits to declining to prosecute youth for low-level nonviolent offenses.

The DA's office should therefore set diversion criteria so that youth who would otherwise be incarcerated are receiving opportunities for community-based rehabilitation and youth accused of very low-level offenses should not be involved in the juvenile system at all. Given the historic net-widening issues and nonexistence of current participants, the county should formally end the YAT program and instead redirect funding directly to community-based providers. The role of the DA's office and probation should be limited to referrals and monitoring outcomes that promote youth development and limit future systems-involvement.

Riverside's diversion programs should not serve to widen the net of criminal or juvenile legal system involvement. Current and future diversion programs should be employed to reduce the number of people who experience incarceration by connecting people to community-based services and diverting them away from future system involvement.

DETENTION

The Riverside DA should actively work to minimize pretrial detention and expand access to early release for individuals who have worked to address the harm they've caused and to rehabilitate themselves.

Pretrial Detention

Pretrial detention refers to the process of jailing people accused of crimes, instead of releasing them back into the community to negotiate a plea agreement or stand trial. Prior to the pandemic, most people detained in California's jails had not been convicted, and California's bail amounts — the highest in the nation — were key drivers of this.[111] Research has shown that there are significant racial disparities in who is able to access pretrial release. In a study of California release rates from 2011 through 2015, 55 percent of Asian people and 49 percent of white people were released pretrial, compared to 38 percent of Latinx people and 34 percent of Black people.[112]

California's cash bail system for determining pretrial release has come under immense scrutiny in recent years for discriminating against low-income people and Black and Brown people. To reduce the risk of COVID-19 transmission, California implemented temporary emergency zero-dollar bail schedules at the start of the pandemic. On April 6, 2020, the Judicial Council of California adopted a statewide emergency bail schedule that set bail at $0 for most misdemeanor and lower-level felony charges.[113] Statewide, the number of people in county jails dropped by 30 percent between February and May (from 50,650 to 22,108).[114]

However, the jail population in Riverside County only decreased by 20 percent across this same period (from 3,823 to 3,049). This modest decline was short-lived. By September the number of people incarcerated in Riverside County jails had again risen to 3,670, where it stayed relatively constant through July 2021. Only 4,455 people were released from Riverside County jails due to COVID-19 since April 5, 2020 — just 7 percent of total jail releases across that period.

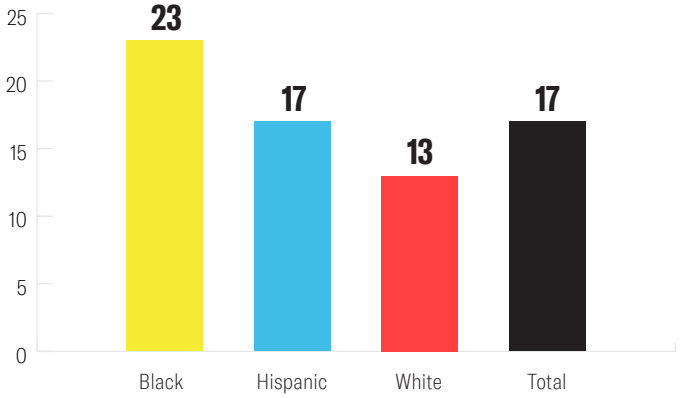
To proactively respond to a pandemic and save lives, prosecutors have the discretion to decline to file low-level charges that do not threaten community safety, divert people away from crowded courtrooms, jails, and prisons. While numerous elected prosecutors across the country took steps to protect public health and public safety,[115] the Riverside DA did not reportedly take any such measures. Their office's official news releases did not include COVID-19 related information, beyond the announcement of their compliance with the state's shelter-in-place mandate and repeated warnings against price gouging.[116] Furthermore, their overall charging practices did not shift in response to the pandemic. While fewer overall cases were filed in 2020, the percent of low-level charges slightly increased from 46.1 percent in 2019 to 46.7 percent in 2020.

Bail information was available for 69.6 percent of cases, and access to zero bail in Riverside County was shockingly low throughout 2020. The statewide emergency bail schedule was intended to set bail at $0 for most misdemeanor and lower-level felony offenses, and nearly three quarters of cases (74.9 percent) filed in 2020 did not include a single felony charge. But only 1.8 percent of cases with bail information filed in 2020 had their bail set at $0.

While this is particularly concerning during a life-threatening pandemic, it appears to be in line with Riverside County's typical bail practices. Less than 0.2 percent of cases filed between 2017 and 2019 had their bail set at $0. Across all four years for which data was provided, less than 1 percent of cases had their bail set below even $1,000. Nearly half (49.3 percent) of all cases filed between 2017 and 2020 had their bail set between $5,000 and $10,000.

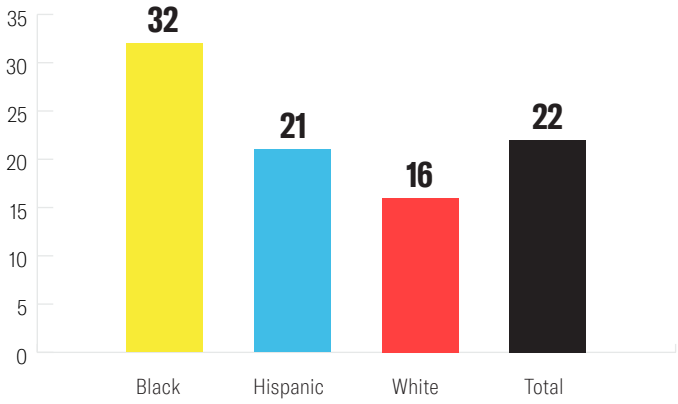
There were notable and persistent racial disparities in which cases received bail over $100,000 (extremely high bail). Cases that included more serious charges were more likely to receive higher bail amounts, but racial disparities persisted across all case types. Overall, 5.3 percent of all cases received extremely high bail, and 16.7 percent of felony cases did. However, this number masks large racial disparities, as 22.7 percent of Black felony cases received extremely high bail, compared to 17.1 percent for Latinx felony cases and 13.5 percent for white felony cases.

Figure 4: Percent of Felony Cases With Bail Set Over $100,000



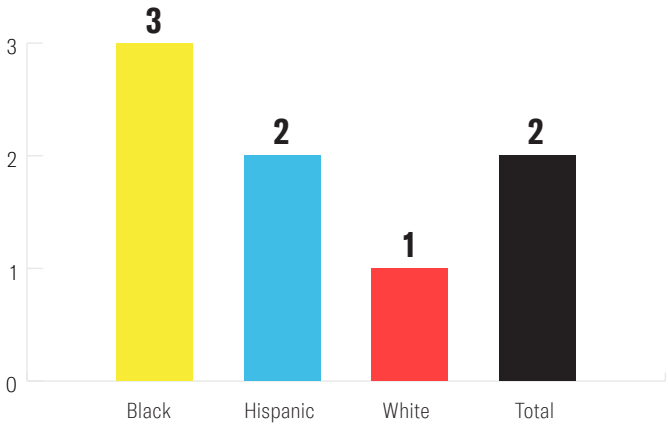
These racial disparities persist across extremely similar cases. The three most common serious or violent felonies across all racial groups were threats to injure (PC 422), second degree burglary (PC 459), and robbery (PC 211). While the total number of cases that include these charges is low (3.2 percent), these three charges represent 42 percent of all serious or violent felonies filed. Twenty-two percent of cases that included one of these three serious or violent felonies had bail set over $100,000. However, 31.6 percent of the cases against Black individuals that included one of those three charges received extremely high bail, compared to 21.1 percent for comparable cases against Latinx individuals and 15.8 percent for comparable cases against white individuals.

Figure 5: Percent of Threats to Injure, Second Degree Burglary, and Robbery Cases With Bail Set Over $100,000



These racial disparities also persist among low-level cases. While it was extremely rare for entirely low-level cases to receive extremely high bail, Black people were again most likely to be impacted. Just over three (3.1) percent of low-level cases involving Black individuals had the bail set above $100,000, compared to 1.5 percent for low-level cases involving Latinx individuals and 1.1 percent for low-level cases involving white individuals.

Figure 6: Percent of Low-Level Cases With Bail Set Over $100,000



Parole

The Board of Parole Hearings (BPH) decides whether an individual is found suitable for, and granted release through, parole. DA's offices can influence this process by taking a position to either support or oppose parole for individuals whom their office prosecuted.

> "They're playing a role in parole hearings now, but it's often to show up to speak against a person being paroled. They have a lot of power, and when they show up at a parole hearing it carries a lot of weight."
>
> — *Vonya Quarles, Starting Over Inc.*

In response to the ACLU's requests for information related to their office's attendance and positions taken at parole hearings, the Riverside DA's Office stated that they attended 390 parole hearings in 2017 and 2018, but they do not keep track of what position they take or the outcomes of those hearings. Statewide, only 17 percent of all parole hearings resulted in parole in 2017 and 22 percent in 2018.[117] The Riverside DA's Office did not provide the number of parole hearings that the office attended in 2019 or 2020.

California PC 3041(b)(1) grants the BPH the authority to determine an individual's suitability for release, and it provides that parole should be granted unless public safety requires further incarceration. Parole decisions should not need to involve the DA's office, whose role in the current criminal legal system is to prove the original case, not determine whether individuals should be granted their freedom once eligible for parole. Unless the DA intervenes to support a person's release through parole, they should leave the determination of parole eligibility to the Parole Board.

Resentencing

While charging and sentencing reforms are urgently needed to stem the tide of incarceration, it is equally necessary that prosecutors take a "second look" at past convictions in order to release people serving unjustly long sentences. In 2018, California passed Assembly Bill 2942, which allows DAs to reevaluate past sentences and determine whether that sentence is no longer in the interest of justice. If they find that an individual should be safely returned to their community, the prosecuting agency can recommend their release to the court.

There are likely thousands of people incarcerated in California that could safely return home.[118] However, only about 75 people have been released statewide through prosecutor-initiated resentencing since AB 2942 took effect in 2019.[119] The Riverside DA will receive additional state funding as part of an $18 million pilot resentencing program,[120] and already has an established Conviction Review Committee, which has historically investigated claims of innocence.[121] Riverside is well-positioned to rapidly expand its resentencing work, and the DA should work with community partners to develop a clear and transparent process to consider resentencing cases.

The Riverside DA should adopt resentencing criteria in line with those developed by Los Angeles DA George Gascón,[122] which commits to an expedited review of cases involving people who:

- Have already served 15 years or more;
- Are currently 60 years of age or older;
- Are at enhanced risk of COVID-19 infection;
- Have been recommended for resentencing by CDCR;
- Are criminalized survivors;
- Were 17 years of age or younger at the time of the offense and were prosecuted as an adult.

Furthermore, any future expansion of prosecutor-initiated resentencing work in Riverside should be funded through savings realized by adopting an expanded "decline-to-charge" list and "automatic pre-plea diversion" list, rather than seeking additional external funding. Lastly, the DA's office should automatically expunge convictions that have been reduced or eliminated through changes in state law.

RECOMMENDATIONS

Based on our findings through record analysis, historical and legal review, and stakeholder interviews, we have composed the following list of policy recommendations for the Riverside DA:

Charging

Riverside County files charges with greater frequency and severity than most of the state, contributing to excessive incarceration and racial disparities. We recommend the DA develop consistent internal guidelines for discretionary charging decisions and publicly advocate for structural changes that include the following:

Adult Prosecution:

- Direct all prosecutors to decline to charge or automatically divert all offenses that the ACLU of Northern California has defined as "low-level" (see Appendix B), which would reduce overall caseload by one third.
- Institute a policy to charge most, if not all, wobblers as misdemeanors instead of felonies.
- End the use of most, if not all, sentence enhancements.
- Publicly support state legislation to decriminalize low-level "decline-to-charge" offenses, re-classify wobblers as misdemeanors, and eliminate sentence enhancements.
- Strengthen charging data collection and transparency practices, including introducing higher standards for error-detection and reduction, creating an end-to-end system that follows individuals from arrest to probation, and publicly reporting key metrics and demographic information.

Youth Prosecution:

- End the adult prosecution of children.
- Publicly support state legislation to ban all transfers of juvenile cases to adult court and institute the presumption on non-carceral and least restrictive solutions for all youth under age 26.
- In keeping with the closure of state-run youth prisons and a ban on out-of-state residential treatment programs, work transparently with community stakeholders to develop local restorative justice programs for adjudicated youth who are responsible for serious harm.
- Conduct comprehensive and mandatory trainings on adolescent brain development and age-appropriate treatment for all juvenile court line DAs and staff.
- Publicly advocate for ending the practice of police and police searches in schools.
- Stop pursuing strikes against youths in juvenile court, where even though youths have no right to a jury trial, they can still be charged with "strikes" under California's Three Strikes Law, which carry lifelong collateral consequences, even if juvenile records are sealed.

Law Enforcement Prosecution:

- 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.

- Create a committee that is responsive to families who have encountered police misconduct, brutality, and killing, including connecting them with services and compensation.
- Commit to keeping a thorough database that includes all incidents of officer misconduct that is fully available to the defense.
- Create a "Do Not Call" list of officers with a history of misconduct, dishonesty, racism or bias and issue an office-wide policy instructing DAs to reject anyone on the "Do Not Call" list as a potential witness and to reject new cases and search warrant requests from these officers

Death Penalty:

- Immediately end efforts to intervene in the Oklahoma federal lethal injection lawsuit.
- Establish a policy to never seek the death penalty and resentence everyone currently serving a death sentence.
- Publicly support state legislation to ban the death penalty in California.

Immigration:

- Require that prosecutors avoid adverse immigration consequences in their charging, plea negotiations, and post-conviction review practices.
- Establish a clear policy to never share information with immigration officials.
- Establish policies to refer undocumented survivors of serious crimes to legal services organizations that can help them obtain a U or T Visa.
- Adopt a process of erasing old convictions for the purposes of eliminating immigration consequences (stipulating to post-conviction motions) in cases where someone has already completed their criminal sentence. This would allow for people to seek relief that avoids immigration and other consequences after a conviction.
- Conduct comprehensive and mandatory trainings on avoiding adverse immigration consequences with line DAs and staff.

Diversion

True diversion programs can reduce recidivism and help address racial disparities in our criminal legal system. The Riverside DA should expand the use and availability of diversion programs for both adults and youth by implementing the following:

Adult Diversion

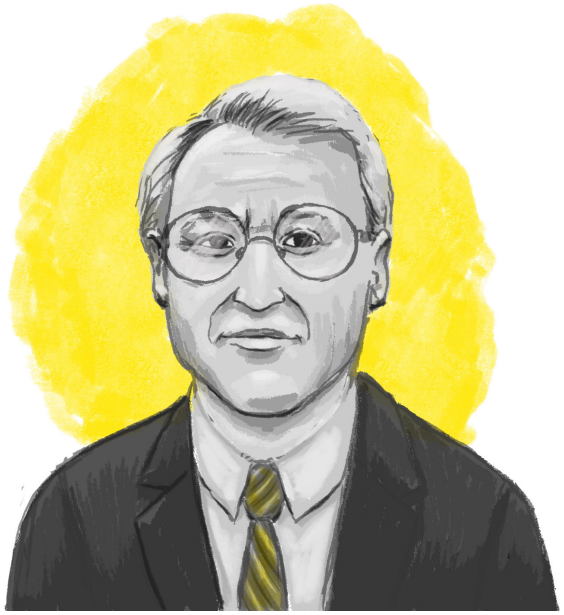
- Automatically divert low-level cases whose charges are included on the ACLU's Diversion list in Appendix B and decline to charge the lowest-level offenses.
- Move delivery of all diversion programs to nonprofit, community-based organizations and restrict the DA's and Probation Department's role to referrals and oversight.
- Transparently and collaboratively develop evidence-based criteria for all diversion programs to expand diversion without widening the net of system involvement.
- Track diversion referrals and completion by primary offense and by race, in order to allow for a comprehensive analysis of diversion access and outcomes.

Youth Diversion

- Work with community stakeholders to expand the offenses for which youth can be referred to diversion without widening the net of youth involved in the juvenile legal system.
- Decline to charge all low-level offenses on the ACLU of Northern California's Decline-to-Charge list in Appendix B and any comparable offenses in the Welfare and Institutions Code.
- Formally terminate the YAT program, redirect funding directly to community-based providers to administer youth diversion programs, and restrict the role of the DA's office and probation to referrals and monitoring outcomes that promote youth development and limit future systems-involvement.

Detention

The role of the prosecutor is to seek justice, not just convictions. Wherever possible, the Riverside DA should work to keep communities safe and whole by avoiding unnecessary incarceration and implementing the following:



Pretrial Detention:

- Advocate for the continuation and expansion of a zero-bail policy, and whenever possible, charge individuals with offenses that fall on the zero-bail schedule, rather than similar charges that do not.

Parole:

- Institute a policy to only participate in the parole process to support an individual's release.

Resentencing:

- Adopt priority criteria for prosecutor-initiated resentencing in line with Los Angeles DA Gascón's resentencing policy, so that more people whose incarceration does not serve the interest of justice can return to their communities.
- Commit to funding resentencing work within the existing DA budget by redirecting resources away from prosecuting low-level offenses toward evaluating currently incarcerated peoples' suitability for resentencing and release.

CONCLUSION

This report presents findings on the policies and practices of the Riverside DA's office to improve public awareness, strengthen accountability, and offer recommendations for structural and policy reforms.

The Riverside DA's office failed to provide useful and comprehensible data and records in a timely manner, and all the data provided had significant amounts of missing or ambiguous information. However, even the incomplete picture demonstrates that the office spends an immense amount of time and resources prosecuting low-level offenses that pose little or no threat to community safety and may worsen long-term outcomes. Just 5.5 percent of cases include a serious or violent charge, but a third (33.2 percent) of cases are entirely low-level charges that could be more effectively, compassionately, and efficiently addressed outside of the criminal legal system. Furthermore, 30.1 percent of all cases include a sentence enhancement, which punitively lengthen sentences with no proven benefits to community safety.

> "It's about re-funding the community, because this public safety budget that we're currently seeing in our county has swallowed up everybody else's money. It gets very difficult to have a healthy county when too much of the money is going to law enforcement, which doesn't have the same community impact as putting the money into the underlying causes of low-level crime."
>
> — *Vonya Quarles, Starting Over Inc.*

This report calls on the office of the DA to change its internal policies and practices to better align with the communal demands for criminal legal system reform. It also challenges the DA to use his platform to call for state-level policy changes that shrink the footprint of prosecution and invest in community-based treatment and prevention programs. We hope that this report can promote public oversight by raising awareness and providing data in support of prosecutor-initiated reform, reducing the scale of incarceration, and redirecting public spending toward preventative and restorative justice investments.

The office of the DA has the power to take immediate action to reduce incarceration and eliminate racial disparities in the criminal legal system. We strongly urge the office to adopt the policies outlined in this report, and we call on the Riverside community to hold him accountable to doing so.

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APPENDIX A

Public Records Request to the Riverside DA's Office

ACLU
AMERICAN CIVIL LIBERTIES UNION FOUNDATION
Northern California

May 13, 2019

Via U.S. Mail and Email

District Attorney Michael Hestrin
Riverside County District Attorney's Office
3960 Orange Street
Riverside, CA 92501
inquiries@rivcoda.org

Re: Public Records Act Request

Dear District Attorney Michael Hestrin:

We write to request the release of public records from the Riverside 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. Records[1] 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 Riverside 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 Riverside 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
TEL (415) 621-2493 • FAX (415) 255-1478 • TTY (415) 863-7832 • WWW.ACLUNC.ORG

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 Riverside 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 Riverside county.
d. Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in Riverside 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

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APPENDIX B

List of Low-Level Offenses

Charge Type	Recommended DA Action
Advertising without a License — BP 7027	Decline to Charge
Contracting without a License — BP 7028	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 Possession — PC 11377	Decline to Charge
Under the Influence of Drugs — HS 11550	Decline to Charge
Resisting Arrest — PC 148, 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, 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

Charge Type	Recommended DA Action
Possession of Vandalism Tools — PC 594.2	Decline to Charge
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 4152.5, VC 4159	Decline to Charge
Bringing Drugs to a Prison — PC 4573	Decline to Charge
Burglary — PC 459* (no person present)	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* (Estes robberies, no injuries, etc.)	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 C

The initial response included two separate and conflicting Excel charging datasets, with no explanation. While both datasets appeared to have been pulled from the same original source, the first included 137,748 unique charges and the second included 323,874 charges.

The smaller dataset did not include demographic information or case-level identifiers, making an analysis of racial disparities or individual-level trends impossible. It included information about the charges filed, the type of charge, the type of case (e.g., felony or misdemeanor), and the count number (e.g. three counts of petty theft). There were also two separate fields with dates. The first was named "Filing Date," and all of the dates listed fell within calendar years 2017 and 2018, as specified in the PRA request. The second date field was named "Charge Dispo Date," and those dates ranged from 2008 to 2048.

The larger dataset also included information about the charges filed, the type of charge, the type of case, and the count number. It was also missing case-level identifiers, but did include race, gender, and bail information. The larger dataset had two fields with dates, which were titled "Def Dispo Date" and "Report Dispo Date." The "Def Dispo Dates" ranged from 1990 to 2081 and the "Report Dispo Dates" ranged from December 2016 through December 2018.

The ACLU of Northern California followed up on Feb. 3, 2021 to request clarification on the differences between these two datasets. The ACLU requested that the Riverside DA re-pull the 2017 and 2018 data based upon the date that a case was originally filed by the DA, because the numerous dates were ambiguously titled and did not appear to be restricted to 2017 and 2018. The ACLU also asked for the same data to be pulled for 2019 and 2020, and requested that all four years include unique case identifiers and demographic information.

On April 22, 2021, the Riverside DA provided a written response to our clarifying questions and offered two additional Excel documents — one for 2017–2018 and another for 2019–2020. Their written response stated that the larger spreadsheet had been prepared by a different Deputy District Attorney in response to a different request from the ACLU of Northern California (the ACLU of Northern California has no record of this earlier request.) They noted that the larger spreadsheet "included cases filed in previous years," but then provided the exact same larger spreadsheet for 2017–2018, with case numbers included. The 2019–2020 document included two sheets, which were separately titled 2019 and 2020, but none of the fields with dates were restricted to those two years.

On April 28, 2021, the ACLU again requested that the Riverside DA pull charging data from 2017–2020 that was restricted to charges filed in those calendar years and included demographic information and case level identifiers.

On June 17, 2021, the Riverside DA's Office provided a single Excel dataset that included adult charges filed between 2017 and 2020 and provided updated diversion data for 2019 and 2020. The dataset included case level identifiers and demographic information, including race. The field "FilingDispositionDate" fell within the specified range of Jan. 1, 2017 through Dec. 31, 2020. However, there was an additional date field titled "Received Date," for which the years ranged from 1911 through 7202. For the purposes of this analysis, we assume that the "Filing Disposition Date" represents the date on which the DA's office filed charges against an individual.