

# IN (JUSTICE) in SACRAMENTO

A Case for Change and Accountability



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# EXECUTIVE SUMMARY

The United States incarcerates the most people in the world, both in absolute and per capita terms. California is no exception to this practice. Federal and state-level reforms are critical for walking back the laws and practices that produced mass incarceration.

However, local elected officials also have a powerful role to play. District attorneys (DAs) have unique discretion over criminal justice proceedings, but limited accountability. Through their charging, sentencing, probation, and diversion decisions, DAs should seek to limit the incarcerated population and undo the disproportionate impacts of mass incarceration on communities of color.

Sacramento County is an important jurisdiction for reform. The county incarcerates roughly 10,000 people between county jails and state prisons. The DA, Sheriff's Department, Probation Department, and courts consume 64 percent of the County General Fund, yet the county's crime rate — though slightly higher than the state and federal average — has declined steadily since 2006.<sup>1</sup> People of color are incarcerated at disproportionately high rates in Sacramento and feel the collateral effects of the carceral system most acutely.

Sacramento DA Anne Marie Schubert has an obligation to her constituents to pursue justice, increase community safety, and make efficient use of the resources afforded to her department. Reducing the incarcerated population through targeted reforms and addressing racial disparities will help fulfill these goals.

The following report outlines the practices and policies of DA Schubert's office through an analysis of prosecution data and qualitative research methods. Findings show ample opportunities for reform, many of which are within the DA's purview and can be modeled after policies in other jurisdictions. In particular, DA Schubert dedicates substantial resources to harmful and counterproductive practices, such as the wide-scale prosecution of low-level offenses and the arbitrary ordering of maximum probation terms.

Funding dedicated to these harmful practices should be cut. Substantially decreasing this portion of the DA's budget would open up resources for investment in the reforms recommended below. These alternatives would improve outcomes for system-involved individuals while building an environment where instances of crime are rare. Structural reforms to shrink the footprint of prosecution are also necessary to end mass incarceration, and the Sacramento DA should publicly support efforts to reign in disproportionate prosecutorial authority and funding.



With this in mind, the Sacramento DA should take the following actions to reform the local criminal justice system for the better:

**End harsh and ineffective charging and sentencing practices.**

The DA’s office should systematically ease sentencing for low-level offenses and wobblers, offenses which can be filed as either misdemeanors or felonies. Prosecutors should also end the use of sentence enhancements and eliminate practices that lead to unnecessarily severe sentences, such as the death penalty and life without parole — otherwise known as death by incarceration. Given that half of cases in the county are made up solely of low-level charges, the DA’s budget should be cut by at least 30 percent and redirected to diversion programs and community-based services that would better support individuals currently being incarcerated for low-level crimes.

**Improve diversion programs by expanding their availability without widening the net of system control.**

The Sacramento DA should presumptively divert low-level offenses, like DUIs and petty theft, which can be better addressed through services and restorative justice programming. To prevent crime and limit people’s unnecessary but costly contact with the criminal legal system, the DA should make it a priority to decline charging extremely low-level offenses like simple possession and loitering. The DA should also expand the collaborative courts, which are courts meant to address underlying needs without incarceration, and shift funding towards community programs that prevent crime from happening in the first place.

**Reduce incarceration by increasing access to pre-trial release, parole, and resentencing.**

The pandemic has highlighted the need for decarceration, and research indicates that a substantial portion of the incarcerated population can be safely released with little risk to public safety. The Sacramento DA should advocate for improved pretrial release practices to permanently reduce the number of people detained in local jails and end policies that discriminate against low-income people and people of color. The D.A’s office should stop opposing the release of people who are eligible for parole and proactively reduce time for people serving unjustly excessive sentences.

**Support reentry through improved probation practices and record clearance.**

The Sacramento DA should stop filing drug possession charges that result from traffic stops of probationers and partner with the Probation Department to replace punitive practices with rehabilitative programs. Prosecutors should reduce the maximum probation to 18 months. To support reentry, the Sacramento DA should expand successful record clearing programs to help mitigate the long-term consequences of incarceration.

**Create better data tracking and reporting systems to ensure transparency and accountability.**

The Sacramento DA’s office must establish a higher standard of data management. It should track and publicly report demographic information, streamline tracking metrics, and publish more detailed information on parole and probation. Prosecutors should introduce higher standards for error detection and build a data system that follows cases from arrest to probation. As an elected official overseeing a publicly-funded office, the district attorney should not hide behind poor data practices. Sacramento residents deserve to know how justice is being served in their community. Schubert’s office should track and publish key metrics on charging, diversion, sentencing, and racial disparities.

# INTRODUCTION

## The Rise and Failure of Mass Incarceration

The United States incarcerates people at a rate higher than any other nation, accounting for 25 percent of the world’s jail and prison population.<sup>2</sup> If California were a country, it would have the fourth-highest incarceration rate in the world.<sup>3</sup> This is not only because California is the most populous state in the nation, but also because of the sheer number of arrests, as California convicts over 500,000 people annually.<sup>4</sup> The state’s history of prison overcrowding, discriminatory criminal justice policies, and high recidivism, make it a critical place for reform.

Despite the U.S Supreme Court’s 2011 ruling that directed California to reduce its prison population to 137.5 percent of planned capacity, 12 of the state’s 35 prisons still operated above this cutoff prior to the start of the pandemic.<sup>5</sup> The state spent more than \$2.5 billion expanding its jails between 2007 and 2020.<sup>6</sup> This has created health and safety concerns for incarcerated people, not to mention violations of their constitutional rights.

People of color are overrepresented in the state’s criminal justice system. In particular, Black men are incarcerated at ten times the rate of white men and represent 28.5 percent of incarcerated men, despite making up only about 5 percent of California’s male residents.<sup>7</sup> The state also has one of the country’s highest recidivism rates. Fifty percent of incarcerated people end up back in prison within three years of their release.<sup>8</sup> California’s criminal justice system has become unwieldy and ineffective, at great human and financial cost.

The state spends over \$13 billion a year on prison operations,<sup>9</sup> or over \$80,000 per incarcerated person.<sup>10</sup> Many argue that the negative consequences of this investment outweigh the positive. Increasing evidence points to the carceral system’s failures to meet many of its specified goals, including justice and public safety. For instance, peer-reviewed research has shown that incarceration does not reduce an individual’s likelihood of committing a violent offense, one of its purported

objectives.<sup>11</sup> Despite the half-century-long War on Drugs, one of the main drivers of mass incarceration, drug use levels remain largely the same, if not worse.<sup>12</sup> In addition, analysis of the release of tens of thousands of incarcerated people in the wake of California’s prison realignment (AB 109), showed no impact on violent crime rates,<sup>13</sup> and instead pointed to decreased recidivism.<sup>14</sup> Meanwhile, Proposition 47, one of the main vehicles for reducing the prison population, is expected to lead to hundreds of millions in savings for the state.<sup>15</sup>

While the benefits of incarceration are questionable, its psychological and material costs are devastating for incarcerated individuals and their families. Their families and communities also feel the effects, as reentering residents struggle to assimilate back into society with limited access to rehabilitative services.<sup>16</sup>

## District Attorneys and the Trend of Progressive Campaigns

DAs have a critical role to play in criminal justice reform. As the ACLU’s website aptly puts it: “District attorneys decide who will be detained in jail before their court date, and who will be sent to state prison. They decide what crimes to charge and control the plea deals offered. With 95 percent of those incarcerated having taken plea deals — including people who have pled guilty to a crime they didn’t commit to avoid the risk of a longer sentence or because they were under duress — prosecutors largely control who ends up behind bars.”<sup>17</sup>

DAs’ significant discretion and autonomy have also led to large inequities due to the variance in criminal justice policies across counties. While DAs should push for standardized reforms to improve access to justice across California, they also have an opportunity to drive criminal justice reform efforts without requiring leadership on the state level. Voters can also hold their DAs accountable as elected officials.

District Attorneys have historically positioned themselves as “tough on crime”<sup>18</sup> to win elections, with little follow-up on the efficacy of their practices. In recent years, however, a number of high-profile prosecutors have won races by campaigning on platforms of criminal justice reform, with a focus on charging, decarceration, and diversion.

After winning 72 percent of the vote in Chicago’s Cook County on a platform of decarceration,<sup>19</sup> DA Kim Foxx raised the bar for felony retail theft charges from \$700 to \$1,000 or greater. This decreased the number of felony retail theft charges by almost 75 percent in the first two years of her administration. She also expanded alternative prosecution practices, such as diversion, and encouraged her deputies to drop charges on low-level offenses, including shoplifting, drug possession, and failure to pay traffic fines. Despite fears that decreased prosecution would result in higher crime rates, the county actually experienced a decrease in violent crime of 8 percent,<sup>20</sup> and the murder rate has decreased every year she has been in office.<sup>21</sup>

In Philadelphia, Larry Krasner won his 2017 election and his 2021 re-election with a campaign platform and record focused on shifting the DA’s office “from a culture of seeking victory for prosecutors to a culture of seeking justice for victims.” Their goals included putting an end to mass incarceration, illegal use of stop-and-frisk, cash bail imprisonment, pursuit of the death penalty, and abuse of civil asset forfeiture.<sup>22</sup> His policies have instructed prosecutors to offer plea deals below the bottom range of Pennsylvania sentencing guidelines for nonviolent offenses, halt prosecution of marijuana cases where there was no intent to sell, decline to charge sex workers before a third prosecution conviction, and handle any small retail theft with a citation. The city’s jail population decreased 33 percent during the first two years of his tenure, without any increase in crime.<sup>23</sup>

Rachael Rollins won the 2018 DA election in Boston’s Suffolk County with promises to end cash bail, pretrial detention, and the prosecution of petty, poverty-related crimes.<sup>24</sup> An empirical study found that her office’s policy to decline to charge certain nonviolent misdemeanors decreased the likelihood of future system involvement without any increase in crime rates.<sup>25</sup>

Former deputy public defender Chesa Boudin won San Francisco County’s 2019 election on a similarly progressive campaign platform. In his short time in office, he has eliminated the use of status sentence enhancements,<sup>26</sup> ended the use of cash bail, reduced pretrial detention,<sup>27</sup> and offered diversion programs for primary caregivers as an alternative to incarceration.<sup>28</sup>

In 2020, Boudin’s predecessor, George Gascón, unseated two-term incumbent Jackie Lacey to become the Los Angeles County DA. He ran on a comprehensive platform of racial justice, police accountability, ending the death penalty, expanding diversion programs, and strengthening immigration-informed prosecution.<sup>29</sup> On his first day in office, Gascón eliminated money bail and announced a ban on sentence enhancements.<sup>30</sup>

## Sacramento County

State-level legislative reform is imperative to create greater DA accountability and reign in harmful practices, but local reform also plays an important role. The needs and opportunities of each county are specific. This report focuses on Sacramento County.

Sacramento DA Anne Marie Schubert first came to office in 2014, and won reelection in 2018 against a reform opponent, Noah Phillips. Schubert was a prosecutor in the DA’s office for 25 years, mentored by former DA Jan Scully, before taking on Scully’s role. She maintains strong relationships with law enforcement, judges, and local businesses, and has continued the tough-on-crime approach of her predecessor.<sup>31</sup>

A vocal advocate against progressive reforms like Proposition 47 and 57, Schubert is also known for heading up the office during the police killing of Stephon Clark in 2018, in which she failed to charge the officers responsible for his murder, leading to widespread protests. This incident, and her subsequent refusal to participate in listening sessions with Sacramento’s Black community, has become an emblem of her office’s failure to serve constituents of color. In 2016, she similarly decided against prosecuting the officers who killed an unarmed and mentally ill Black man named Joseph Mann, using both their vehicle and 14 bullets.<sup>32</sup>

Since DA Schubert took office in 2015, there have been at least 35 police killings in Sacramento County, but no officer has faced legal consequences.<sup>33</sup>

DA Schubert's allegiance to the police comes as no surprise given the hefty campaign contributions she received from police during both her runs for office. In 2014 her office received the third highest amount of law enforcement campaign contributions in the country, totaling \$38,822.<sup>34</sup> In 2018 these contributions increased to just shy of \$200,000 from 13 police associations.<sup>35</sup> Since 2015, DA Schubert has not once prosecuted an officer in 33 officer-involved shootings.<sup>36</sup>

DA Schubert ran her past campaigns on a platform of "prosecution, prevention, innovation,"<sup>37</sup> and her office's stated goal is to "seek justice within the bounds of the law, not merely to convict."<sup>38</sup> However, there is little formal evaluation of her track record in office against which to measure her successes or failures. Her vigorous opposition to reform suggests her office's goals are not aligned with the state-level mandate to decrease the incarcerated population or with Sacramento voters who have repeatedly voted in support of criminal justice reform.

Of Sacramento County's General Fund dollars, 64 percent goes to law enforcement (DA, Sheriff, Probation). The DA's office receives 8 percent, compared to just 4 percent for the Public Defender's Office.<sup>39</sup> While alarming, this discrepancy is typical across California and the country.<sup>40</sup> This disparity in resources allows DA Schubert to prosecute at a high volume, even if that may be a wasteful use of taxpayer dollars.

As efforts to defund police departments and reinvest in communities gain traction in jurisdictions across the country, the role of prosecutors in mass incarceration must not be overlooked. The DA's office is part of the same law enforcement regime that consumes local budgets while exercising little accountability to their constituents and committing violence against communities of color. Transferring funds away from bloated police budgets and the DA is common-sense policy. Investing in alternative justice models and public services will ensure resilient and thriving communities. Policing and incarceration won't.

The local Sacramento system relies on two county jails, which hold individuals in pretrial custody as well as those convicted of misdemeanors and non-violent, non-serious felonies. Sacramento County's Rio Cosumnes Correctional Center holds an average daily population of roughly 1,700 people, and the Sacramento County Main Jail holds an average daily population of 1,900 individuals.<sup>41</sup> The county also sends individuals convicted of felony charges to state prison. According to the California Department of Corrections and Rehabilitation, 5 percent (6,776) of those incarcerated in the state's prisons are from Sacramento County.<sup>42</sup> Twenty-eight percent of these incarcerated people are Black, despite Black people making up 11 percent of the county population.<sup>43</sup> The county's rates of both arrest and incarceration are higher than state averages.<sup>44</sup>

In April 2021, DA Schubert announced that she will not seek reelection in 2022.<sup>45</sup> She will instead run for state Attorney General, leaving the Sacramento DA seat open. DA Schubert's tenure has led Sacramento to fall behind the rest of the state, and her office has proactively undermined recent and pending legislation to improve the state of criminal justice in California. This report analyzes DA Schubert's policies and practices as a DA to ascertain opportunities for reform in Sacramento, with an eye toward the following goals:

- Significantly reduce the number of people involved in Sacramento's criminal justice system;
- Significantly reduce racial disparities in the criminal justice system; and
- Reduce harsh sentencing and allow for more people to come home from incarceration through legal avenues available to the DA.

The resulting recommendations are based on these goals, and focus on maximizing equity, efficient use of resources, and public welfare.



# METHODS

On May 13, 2019, the ACLU of Northern California sent a California Public Records Act request to the Sacramento District Attorney's Office to acquire data on cases filed in calendar years 2017 and 2018, as well as materials documenting the office's formal policies. The request can be found in Appendix C. The DA's office provided a spreadsheet responsive to the data request, and a series of documents only partially responsive to the request for policies.

The data provided presents several opportunities and limitations. It documents cases filed in calendar years 2017 and 2018, including infractions, misdemeanors, and felonies. It tracks first, middle, and last name, case number, filing charge(s), disposition, and sentence, but does not include demographic information, like race or age. The data paints a surface-level picture of the DA's practices. The findings section details a range of descriptive data, including the most common charges, rates of conviction and dismissal, average sentence, and the treatment of wobbler offenses, which can be filed as either a felony or misdemeanor.

The analysis relied on several assumptions which are detailed in the relevant findings section. The data presented many challenges in terms of missing data, inconsistent tracking processes (especially in sentencing), and purposeful exclusion of important information such as the race and age of defendants. The recommendations section addresses the many opportunities for the DA's office to update their data collection and documentation practices to ensure relevant data is accessible and transparent.

Due to the limitations of the data, qualitative interviews and analysis of written policies were necessary to fill in the gaps. Interviews with public defenders, impacted individuals, advocates, and the Chief Probation Officer helped clarify findings from the data and contextualize the formal policies released by the office. Together, the quantitative and qualitative findings offer a comprehensive picture of existing criminal justice policy in the county and illuminate some of the most salient opportunities for reform.



# CHARGING DECISIONS

The most central function of the DA’s office is to decide whether or not to charge people arrested by law enforcement. The data provided by DA Schubert’s office covers a total of 97,716 charges filed between 2017 and 2018.

These charges represent 45,779 unique cases, as many cases include multiple charges. Because some people had multiple cases filed against them in those two years, these cases represent over 35,000 county residents. More than 15,000 people were convicted of charges filed in 2017 and 2018. The data does not indicate the number or type of cases that the DA *declined* to prosecute.

The following tables describe the ten most common charges that led to a conviction, broken down by misdemeanors and felonies. Among all initially

filed charges, 64 percent were filed as misdemeanors and 35 percent as felonies. Among charges with disposition information available,<sup>46</sup> including whether the charges were dropped or reclassified, 72 percent were ultimately charged as misdemeanors and 28 percent as felonies. These frequencies suggest that DA Schubert devotes substantial resources to charging and trying low-level offenses. The following tables outline the most commonly sustained misdemeanor and felony charges, meaning that they led to a person’s conviction.

**Table 1: 10 Most Common Misdemeanor Charges Leading to Conviction**

Charge	Frequency	Percentage of Misdemeanor Charges Leading to Conviction	Cumulative
DUI – VC 23152	8,495	31	31
Meth Possession – HS 11377(a)	1,641	6	37
Driving with Suspended License – VC 14601.2(a), 14601.1(a)	1,534	6	43
Theft – PC 484(a)	1,349	5	48
Domestic Violence – PC 243(e)(1), PC 273.5(a)	1,230	5	53
Resisting an Officer – PC 148(a)(1)	1,052	4	57
Vandalism – PC 594(a)	636	2	59
Driving Stolen Vehicle – VC 10851(a)	579	2	61
Drug Paraphernalia – HS 11364	566	2	63

**Table 2: 10 Most Common Felony Charges Leading to Conviction**

Charge	Frequency	Percentage of Felony Charges Leading to Conviction	Cumulative
Burglary — PC 459	940	9	9
Driving Stolen Vehicle — VC 10851(a)	934	9	18
Firearm Possession (Felon or someone with addiction) — 29800(a)(1)	797	7	25
Robbery — PC 211	660	6	31
Domestic Violence — 273.5(a)	506	5	36
Reckless Driving while Fleeing from an Officer — VC 2800.2(a)	404	4	40
Drug Possession for Sale — HS 11378	395	4	44
Assault likely to result in serious bodily injury — PC 245(a)(4)	344	3	47
Assault with Deadly Weapon — PC 245(a)(1)	334	3	50
Grand Theft — PC 487(a)	313	3	53

Among both felonies and misdemeanors, DUIs, meth possession, driving a stolen vehicle, and petty theft are the most common charges leading to conviction, making up more than a third (34 percent) of all sustained charges. Between 2017 and 2018, 912 individuals were convicted of DUIs,<sup>47</sup> 925 of meth possession, 815 of petty theft, and 905 of driving a stolen vehicle. These cases present opportunities for diversion and restorative justice, as they stem from needs that would be better met by addiction counseling and recovery programs and social services that alleviate poverty in the short and long term. The impact ratio would also be high, given that reforms to only four categories of offenses would remove the need to prosecute a third of sustained charges. Such shifts would prioritize rehabilitation over recurring and ineffective punishment. The recommendations section will offer guidance on how these charges could be handled more effectively, with examples of specific diversion opportunities.

Sixty-one percent of all cases between 2017 and 2018 involve more than one charge, with an average of 2.14 charges per case. Sixty-seven percent of cases that end in conviction have more than one charge. Of misdemeanors, the average number of charges per case is 2, and for felonies, it's 2.5. As the charge count increases, the likelihood of a

conviction also increases. Single-charge cases have a 68 percent conviction rate, while cases with three charges or more have a 90 percent conviction rate. In multi-charge cases that result in conviction, the DA generally dismisses most of the charges. For example, of cases with three charges, about half involved conviction on only one charge; the same is true for cases with four charges.

Charge stacking — or prosecuting people on multiple charges related to a single offense — is sometimes used to intimidate people facing charges and increase the chance of extracting guilty pleas.<sup>48</sup> The Sacramento DA's office, like most DAs across the country, may at times stack charges to increase the likelihood of people agreeing to unfavorable plea deals. The disposition data also indicates this is a possibility. The high rate of No Contest dispositions, in which defendants take responsibility and serve time for crimes to which they do not admit guilt, is particularly telling.

## Low-Level Offenses

Of all 97,716 charges, 63 percent were low-level offenses, like vandalism or petty theft, that should be declined to charge or diverted. A full list of charges considered low-level can be found in Appendix B. Fifty percent of cases were comprised of low-level offenses. These low-level cases led to conviction 80 percent of the time in cases where dispositions were available. The most common low-level charges leading to conviction can be found in the table below.



**Table 3: 10 Most Common Low-Level Charges Leading to Conviction**

Charge	Recommendation	Frequency	Percent of all Charges Leading to Conviction
DUI – VC 23152(b)	Diversion	8,783	23
Meth Possession – HS 11377(a)	Decline to Charge	1,705	5
Driving with Suspended License – VC 14601.2(a), VC 14601.1(a)	Decline to Charge	1,593	4
Driving Stolen Vehicle – VC 10851(a)	Diversion	1,513	4
Petty Theft – PC 484(a)	Diversion	1,350	4
Burglary – PC 459*	Diversion	1,164	3
Resisting Arrest – PC 148(a)(1)	Decline to Charge	1,058	3
Vandalism – PC 594(a)	Decline to Charge	863	2
Possession of Firearm by Felon or Person with Addiction – PC 29800(a)(1)	Diversion	804	2
Robbery – PC 211*	Diversion	751	2

\* In cases in which no victim is present or harmed.

To decrease the number of people incarcerated in Sacramento County and shift resources to address serious harms humanely, the DA should develop a policy to decline to charge low-level offenses and to divert charges that can be better addressed through community-based services and programming. 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.<sup>49</sup> Some common charges — like a DUI — might indicate an underlying problem like substance use disorder,

which could be better addressed through substance dependency counseling outside the carceral system. The chart in Appendix B that outlines all low-level offenses indicates which charges the DA should decline to charge or which should lead to default pre-charge diversion.

Given that half of existing cases could be safely removed from the DA’s caseload, a substantial portion of the DA’s budget should also be reallocated to other county departments to support more effective diversion programs and other public services such as housing, mental health treatment, and jobs. This shift could help remove the conditions that cause crime to occur in the first place.

## Wobblers

In California, a subset of crimes, known as wobblers, can be charged as misdemeanors or felonies at the prosecutor’s discretion. The collateral consequences of having a felony conviction impact individuals across their lifetimes, especially due to California’s Three Strikes Law and legalized discrimination in employment. The increase in life sentences and sentence length has meant the incarcerated population of those aged 50 and older has quintupled since 2000.<sup>50</sup> Establishing a policy to charge wobblers as misdemeanors over felonies could start to reverse this trend, and the DA has substantial discretion to make this change.<sup>51</sup>

Of the total 97,716 charges from 2017 and 2018, 58 percent were wobblers. Of the 45,779 total cases, 19,456 (43 percent) were made up exclusively of

wobbler charges. There was an 82 percent conviction rate among wobbler cases with disposition outcomes, and about a quarter of those cases led to a felony conviction. However, 41 percent of these cases included a felony charge when they were first filed. Initially charging wobblers as felonies is another negotiating tactic available to prosecutors, who can offer to reduce that charge to a misdemeanor as part of a plea bargain.

The following table illustrates the most common wobbler charges with disposition information available, and the severity at which they were initially charged and ultimately convicted. The charges highlighted in yellow indicate wobbler charges that are more frequently filed and concluded as felonies rather than misdemeanors.

**Table 4: 10 Most Frequently Sustained Wobbler Charges**

Charge	Original Charge		Disposition Charge		Total Charges
	Misdo.	Felony	Misdo.	Felony	
DUI – VC 23152(a), VC 23152(b)	7,547	219	7,552	212	7,766
Drug Possession – HS 11377(a)	1,624	81	1,641	64	1,705
Driving Stolen Car – VC 10851(a)	13	1,500	579	934	1,513
Domestic Violence – PC 273.5	453	818	506	765	1,271
Burglary – PC 459	6	1,158	224	940	1,164
Assault & Battery – PC 245(a)(1), PC 245(a)(2), PC 245(a)(4)	62	984	332	714	1,046
Vandalism – PC 594(a)	480	383	636	227	863
Grand Theft – PC 487(a)	30	511	228	313	541
Recklessly Fleeing an Officer – VC 2800.2(a)	6	447	49	404	453
Simple Possession of Drugs – HS 11350(a)	359	11	361	9	370

Driving a stolen car, burglary, assault and battery, grand theft, and fleeing an officer are almost exclusively initially filed as felonies. While these charges are sometimes negotiated down to misdemeanors by the time of conviction, they are overwhelmingly charged as punitively as possible. In

general, wobblers should be presumptively charged as misdemeanors, with higher specific standards for felonies. Particular conditions should be weighed strongly when considering charging severity, including whether the accused is a young person under the age of 26 or a primary caretaker.

## Serious or Violent Offenses

While the charging and sentencing of low-level and wobbler offenses present an opportunity for reform, DAs must also change how they address serious offenses in order to substantially lower the prison population. A majority of those serving long sentences were convicted of crimes currently categorized as violent in California state law. In Sacramento County, 10 percent of cases involve serious or violent offenses, and 84 percent of cases with disposition information led to convictions.

Of the 97,716 charges, 3,268 were serious or violent charges — just 3.3 percent of all charges filed. The following chart details the ten most common serious or violent charges with disposition information. It breaks them down by disposition type: dismissed after sentencing or conviction (DS/DC), guilty, or no contest. All of the offenses below were originally charged as felonies, but the chart shows how many ended up being convicted as misdemeanors.

**Table 5: Dispositions of Sustained Serious or Violent Offenses**

Charge	Total	Percent of Charges Leading to Convictions	Charge Disposition				
			DS/DC	Guilty		No Contest	
				Misdo.	Felony	Misdo.	Felony
Burglary — PC 459	1,165	3%	8	4	54	214	885
Robbery — PC 211	751	2%	0	7	71	84	589
Criminal Threats — PC 422	306	1%	1	3	22	125	155
DUI while breaking other law and bodily injury — VC 23153	270	1%	0	0	14	68	188
Child Molestation — PC 288(a)	197	1%	0	0	78	6	113
Discharging Firearm in Grossly Negligent Manner — PC 246.3(a)	75	0.2%	1	0	2	27	45
Homicide — PC 187(a)	74	0.2%	0	0	39	0	35
Assault with Firearm — PC 245(b)	51	0.1%	0	0	17	1	33
Carjacking — PC 215(a)	41	0.1%	0	0	7	1	33
Arson of Property — PC 451(d)	37	0.1%	0	0	2	8	27

The people who are charged with serious offenses cannot go ignored when considering criminal justice reform. To address this will require shifts in the DA’s position on what is the appropriate sentence for such offenses. Reducing draconian sentencing of crimes can have powerful impacts on recidivism. According to the Public Policy Institute of California, shorter and less severe sentences lead to lower recidivism

rates even among those convicted of felonies, which supports previous research on the subject.<sup>52</sup> Shorter sentences also save the system significant funding that can be diverted to rehabilitative programming. This shift in approach would address many of the underlying factors involved in any situation where one person harms another.

## Dispositions

In addition to deciding which cases get tried, the DA’s office has a significant impact on case outcomes. Dispositions fall into one of the following nine codes, designated by the Sacramento Superior Court:

NC = no contest (nolo contendere)    GC = guilty by court  
 DI = dismissed    GJ = guilty by jury  
 AQ = acquitted    DS = dismissed after sentencing  
 DV = diversion    DC = dismissed after conviction  
 GP = guilty by plea

When similar categories are combined, we see the following disposition rates by charge:

**Table 6: Consolidated Charge Dispositions**

Disposition	Frequency	Percent
Acquitted	265	0.3%
Dismissed	42,012	52%
Dismissed after Sentencing or Conviction	145	0.2%
Diversion	1,026	1%
Guilty (GP, GC, GJ)	1,887	2%
No Contest	36,274	45%
<b>Total Non-Missing Dispositions</b>	<b>81,609</b>	<b>100%</b>

‘No Contest’ was separated from guilty dispositions because while the sentence is often the same, an individual who pleads NC is not admitting guilt. Immigrants can however be deported for an NC charge on their record, which leads the disposition to have disparate impacts by immigration status. In addition, a good portion of the guilty pleas plausibly involved innocent people who pleaded guilty to avoid a harsher sentence if the case went to trial.<sup>53</sup>

Almost half of charges and 19 percent of cases were dismissed, despite the intention of DAs to only prosecute charges likely to lead to a conviction. Qualitative interviews suggest that the outsized resources of the DA’s office in comparison to the Public Defender’s have led that office to adopt a prosecution strategy based on volume, despite it being an inefficient use of resources.<sup>54</sup> That is, DA

Schubert may be prosecuting at a higher rate to achieve a larger absolute number of convictions, even though many of the individual cases are unlikely to produce a conviction. Because DA Schubert’s office did not provide data on cases they chose not to prosecute, there is no way to prove this quantitatively.

Meanwhile, according to the data provided, only 1 percent of charges go to diversion, a gross underuse of this alternative to incarceration. Follow-up conversations with the DA’s office and local attorneys indicate that diversion is not holistically tracked through prosecution data, and that a higher percentage of individuals participate than the data suggests. However, without any clear tracking on the part of the DA, it is impossible for the public to understand the full scope of diversion and its use in the county. Increased access to diversion programs, if properly designed and paired with a clear “decline to charge” policy, could reduce recidivism and use resources more efficiently.

Overall, 17 percent (16,107) of filed charges had missing dispositions, 44 percent resulted in non-conviction (AQ, DI, DV), and 39 percent resulted in a conviction (NC, GP, GC, GJ, DS, DC). Diversion was assumed to constitute a non-conviction, however in some cases, a conviction is required for someone to be diverted to other services. Diversion is such a small percentage of the data that it should not bias the results even when included in the non-conviction category.

Eighty-three percent of cases with disposition information resulted in a conviction. The case-level conviction rate is higher because cases often involve multiple charges, some of which were dismissed, even when the overall case led to a conviction. In other words, 83 percent of cases that go through the DA’s office in the county lead to a criminal sentence.

## Sentencing

Sentencing is another critical area of discretion afforded to the DA. The sentencing types listed in the dataset are Straight Time, County Jail Prison, State Prison, Alternative Sentencing Program, Sheriff's Work Project, and State Hospital. Straight time is for those serving shorter sentences for low-level charges at one of the two Sacramento jails. State Prison is for those prosecuted in Sacramento and sent to serve their sentence at a state prison. County Jail Prison accounts for individuals who would have been sent to state prison prior to realignment but will instead serve those prison sentences in county jail. Sixty percent of convicted cases resulted in incarceration. The rest resulted in time in the Sheriff's Work Project.

The below table summarizes the average sentence length for the two types of jail sentences.<sup>55</sup>

**Table 7: Average Jail Sentence Type and Length**

Sentence Type	Average Sentence Length
Straight Time	104 days
County Jail (Serving Prison Time in Local Jail)	1.9 years

Decreasing sentence length is critical, especially with the growing challenge of overcrowded county jails and prisons, and the fact that 63 percent of the county jail population is composed of individuals awaiting trial.<sup>56</sup> To lower the state prison population to comply with the 2011 Supreme Court order, more people now serve their sentences in county jails and jail populations have been increasing.<sup>57</sup> But these facilities are often inadequate even for short-term stays.

Sacramento County Main Jail was the subject of a lawsuit for the inhumane treatment of people incarcerated there. The plaintiffs reported aggressive and unconstitutional use of solitary confinement, negligence towards those with mental and physical disabilities, and inadequate medical services.<sup>58</sup> The other jail in Sacramento, the Rio Cosumnes Correctional Center, is largely made up of buildings built in the 1950s.<sup>59</sup> Those housed in Sacramento's jails have reported egregious conditions, from bed bugs and rats, to maggots

in the food. The Marshall Report reported that incarcerated people prefer going to state prison over Sacramento's jails, due to unacceptable conditions. This pattern is true across California county jails. The violence, death, and suicide rate in California jails has increased since realignment, and Sacramento is among the hardest hit counties, due to the high number of incarcerated people.<sup>60</sup>

In response, the county championed jail expansion and new jail construction projects. Yet increasing the number of jail cells and people behind bars is not a long-term solution for fostering a safe and thriving Sacramento. The DA, in her unique prosecutorial power, has significant and direct impact on limiting the number of people in jails by easing charging and associated sentencing practices. This should include adopting the ACLU's "decline to charge" and "pre-charge diversion" lists, as discussed above, and ending the use of sentence enhancements.

Sentence enhancements increase the total incarceration time for a crime based on how the crime was committed or who committed it. State law authorizes prosecutors to use prior convictions, for which individuals have already served time, and alleged gang affiliation as justification to extend sentences.<sup>61</sup> 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.<sup>62</sup> Those serving time for these enhancements are disproportionately people of color.

In California, 92 percent of people in prison with gang enhancements are Black or Latinx.<sup>63</sup> Of the 78,096 individuals in the state's database on gang membership, 65 percent are Latinx, and 24 percent are Black.<sup>64</sup> However, Latinx people make up 39 percent of the state's general population, and Black people make up 7 percent.<sup>65</sup> The use of gang enhancements creates racially disparate sentence durations. While the state permits DAs to use status and gang enhancements, they are not mandated to do so. The Sacramento DA should follow in San Francisco DA Chesa Boudin's footsteps by ordering line prosecutors to proactively stop using sentencing enhancements. In his announcement ending the use of status enhancements in San Francisco, DA Boudin stated: "We do not need to punish people for



who they are or what their previous crimes were... Sentencing enhancements based on who you know rather than what you did are relics of the tough-on-crime era that failed to make us safer. ... Instead, they led to mass incarceration, targeted innocent Black and Brown drivers, and increased recidivism. They stand in the way of fairness and justice.”<sup>66</sup>

The Sacramento DA also utilizes two additional programs outside formal incarceration: the Alternative Sentencing Program (ASP) and the Sheriff’s Work Project. More information on both programs would be necessary to evaluate their value as alternatives to incarceration. The DA’s website indicates that ASP usually involves “Home Detention, Adult Work Project, and Community Service,” and that convicted individuals pay both an application and program fee to participate in this program.<sup>67</sup>

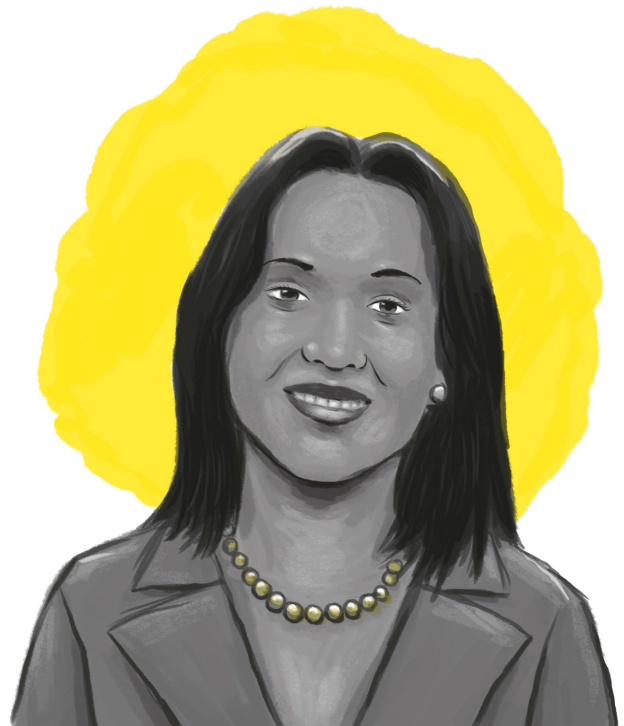
Monetarily charging convicted individuals to work is a common practice across California. However, it is unethical and likely ineffective. In particular, ASP is used to allow people to “pay off fines they otherwise may not have been able to afford.”<sup>68</sup> It stands to reason that if someone cannot afford fines to begin with, they also wouldn’t be able to pay additional fees associated with the program. Instead, they would benefit from receiving rehabilitative services that lead to paid work opportunities. That being said, the program appears to be ordered so rarely that investigation into its efficacy may not be the best use of resources. Only 80 of the total 45,779 cases were referred to ASP.

The Sheriff Work Project was ordered more frequently. About 7,500 cases resulted in individuals serving time as unpaid laborers. The work project is sometimes the sole sentence, and in other situations is ordered in addition to incarceration and can be used as a means for incarcerated people to reduce their time behind bars via good time credit.<sup>69</sup>

While the DA should invest in alternatives to incarceration, these programs should serve a rehabilitative purpose. Relying on free prison labor for the county’s beautification projects and community programs is immoral and unsustainable. More information about these programs could illuminate whether they are effective or helpful for the participants and community. However, the explanation available on the DA’s website is scant. The ACLU sent follow-up questions to

a representative from the DA’s office to better understand these programs, but they had no knowledge of the programs to share.

The availability of demographic data would provide further insights into the DA’s sentencing patterns. Black individuals’ disproportionate representation in the county’s prison population could indicate racially discriminatory charging and sentencing practices. Prosecutors have significant latitude in sentencing decisions, especially in constructing plea deals, which make up most dispositions. Racial bias in this subjective process is likely to account for at least some of the inequities in Sacramento County’s carceral system. It is critical for the Sacramento DA’s office to improve their data collection and publication methods to identify and address drivers of racial disparities. Better data — including demographics and arrest-to-probation information — would illuminate where, and to what extent, the DA’s decisions are responsible for the racial disparities among defendants and individuals in prison.



# DIVERSION

Diversion appears to be used at a negligible rate in Sacramento County. According to the data shared by DA Schubert's office, only 1 percent of charges lead to diversion.

The DA's office claims that a higher percentage of individuals than represented in the data receive diversion. In response to requests for diversion data, a representative from the DA's office indicated that, "Typically, with diversion, if the defendant successfully completes the conditions of diversion, the charges are dismissed. If the defendant fails to complete the conditions of diversion, a sentence is imposed. The report we can compile would only show the ultimate outcome of the case (i.e., charges dismissed or sentence imposed). To determine whether a case involves diversion would require a hand search of the case's event history, which would be unduly burdensome given the tens of thousands of cases involved."<sup>70</sup> Instituting proper tracking of diversion participation is a critical starting point for the DA's office, but without data to prove otherwise, the public cannot assume participation is high.

Despite lack of tracking and low reported participation, the county does offer a number of diversion programs:

- 1) The **Deferred Entry of Judgment** program, run through the private for-profit Pacific Educational Services, offers dismissal of charges if defendants complete educational programs, and pay fees and restitution. Based on documents provided by the DA's office, the most common situations for which this program is available are drug use, truancy, theft, driving violations, and charges related to anger management.<sup>71</sup> Concerningly, most of these charges are so low-level that they should be declined to charge, rather than diverted. Research shows that declining to charge very low-level crimes can decrease the likelihood of future criminal justice involvement with

no increase in local crime rates, and the DA should always prioritize declination in such circumstances.<sup>72</sup> Furthermore, diversion programs should be offered free of charge to all participants, so that ability to pay is not a barrier.

- 2) Pretrial **mental health diversion** is available to individuals suffering from mental illnesses that led them to commit crimes. Concerningly, a sizable list of felonies are ineligible from this program. For those who can participate, the courts and attorneys agree to a treatment plan, the court monitors the defendant's progress, and if they can complete the program in two years, charges are dismissed. The court can intervene and resume criminal proceedings for a number of reasons during the period of diversion, including failure to adhere to the prescribed program.<sup>73</sup> This program appears promising, but with 20 percent of the jail population and 15 percent of the prison population suffering from serious mental illness, it would need to be significantly expanded to serve the population in need.<sup>74</sup> As of summer 2019, there were only 142 active participants in the program, and 69 closed cases. The data provided by the DA did not specify whether charges were dismissed, nor whether participants successfully completed the program.<sup>75</sup>
- 3) The county also has **collaborative courts**, which support alternatives to incarceration for individuals with particular needs like veterans and unhoused people. They are managed between "the Superior Court, the Probation Department, the Public Defender's Office, and sometimes community-based organizations." Participation in the collaborative courts can sometimes lead to the dismissal of charges

or reduction in filing severity. Currently, the county has 12 collaborative courts, including DUI Treatment Court, Mental Health Court, Veterans Treatment Court, Juvenile Drug Court, and Homeless Court — each customized to the needs of the appropriate community.<sup>76</sup>

There are a number of major opportunities for reform to the county’s management of diversion, which could lead to better use of public funds and decrease the number of people behind bars:

### 1) **DUIs**

DUIs are the leading cause of fatal car accidents in Sacramento County and account for over 30 percent of all sustained misdemeanor charges. According to the DA’s policy manual, the office is committed to “prosecuting these crimes in the interest of public safety and with the goal of the prevention of future offenses.”<sup>77</sup> Most people convicted of DUIs in Sacramento are criminally sentenced rather than diverted to rehabilitative programs. Even those who go through the DUI Treatment Court participate in addition to, rather than as an alternative to, incarceration. It is critical to consider the experience of those directly impacted. In her experience with a DUI charge many years ago, vice president of the Sacramento Justice League, Mackenzie Wilson, indicated that her experience of a DUI class was much more powerful and effective for her, compared to other punitive and costly measures.<sup>78</sup> Diversion program eligibility should be expanded to include DUI charges.

### 2) **Auto and Petty Theft**

Theft also makes up a substantial portion of sustained charges in Sacramento. Between 2017 and 2018, over 800 people were convicted of petty theft or driving a stolen vehicle. Theft, like drug abuse, is often a result of economic conditions that are exacerbated by incarceration. Sacramento County’s above-average poverty rate indicates the need for better public assistance that offers a safety net to struggling individuals. In equal measure, victims of petty theft would benefit from restorative justice practices. This is particularly true, as those who are struggling enough to commit theft are unlikely to have the ability to

pay restitution to victims. Finally, because theft can be considered a crime of “moral turpitude,” it is also a deportable offense. Such low-level crimes should not be met with incarceration and certainly should not be met with deportation. The DA should automatically direct all individuals arrested for allegedly committing these offenses to diversion. In addition, the County Board of Supervisors should reallocate funds that would otherwise be used in prosecuting these crimes to other agencies and community-based programs that can offer resources.

### 3) **Domestic Violence**

Domestic violence makes up a substantial portion of sustained charges in Sacramento. Over 900 individuals were convicted of domestic violence between 2017 and 2018. Alternative means to address domestic violence often receive pushback because these cases involve physical harm. However, if the goal of the DA is to limit harm to the victim and avoid future instances of domestic violence, incarceration is not the most sensible option.

Instances of domestic violence tend not to be isolated. Those who commit domestic violence are likely to do so again, due to the underlying conditions that cause violence. Sending someone to jail for a short period — an average of about 1.5 months in Sacramento for misdemeanor-level cases — does little to lower the likelihood of continued harm. In fact, it often increases it. Incarceration puts emotional strain on the individual and their family. It can also remove a source of household income and add further financial burdens through costs like bail and fines. This can perpetuate a cycle of domestic violence and escalating sentences of incarceration. This approach constitutes a form of negligence on the part of the DA in terms of the victim’s safety. A holistic program that addresses the root causes of violence — and provides housing and other support to victims — would be far more appropriate.

The Sacramento DA should introduce a diversion program for domestic violence cases with options suitable to the specific conditions of the case. Family and couples therapy, as well as

restorative justice practices, should be offered in situations where both parties are interested in reconciliation. In cases where the person harmed seeks to leave the relationship but doesn't have the ability to do so, local welfare agencies can offer assistance like housing alternatives and the support of a social worker. Treatment and support for the person causing harm is also critical. Existing models and new ones can be developed with local community-based organizations in Sacramento. Such a program could be administered by a government agency outside law enforcement which would be less burdensome for the DA, public defender, and courts and more appropriate for involved parties, instead of recycling people through a broken system.

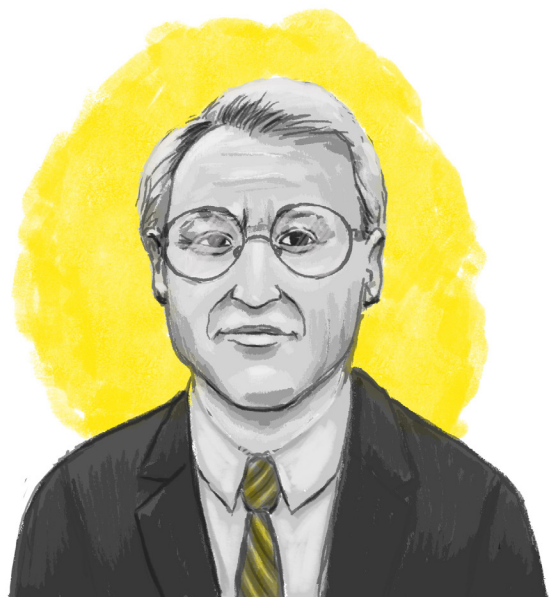
#### 4) Collaborative Courts

While Sacramento County has a number of collaborative courts to support individuals struggling with addiction, homelessness, and mental health challenges, there is room for improvement. The county would greatly benefit from an expansion of these courts and improvement of their services modeled after successful alternatives across the country like the Community Court program in Red Hook, Brooklyn. The Red Hook Justice Center has won national awards for its alternative courtroom, which offers alternative justice including “community restitution projects, short-term psycho-educational groups, and long-term treatment.” The Center’s courtroom and supplementary programming have been shown to reduce recidivism and the jail population.<sup>79</sup> Further models to support the improvement of these courts are available through the Center for Court Innovation in New York,<sup>80</sup> the Restorative Justice Initiative,<sup>81</sup> and the San Francisco DA’s restorative justice practices and community courts.<sup>82</sup>

#### 5) Community Programs

The DA’s office receives a sizable portion of the county’s budget and would do well to divert some of its resources to promising programs in the community. Dozens of underfunded government and nonprofit programs in the county would benefit from these investments.

One example is Richmond-based Advance Peace, founded by DeVone Boggan, which assigns mentors to young men who are high-risk, trauma-impacted, and under-served. The mentors who work for Advance Peace are from the communities they serve. They understand the men they are working with in a way that external authorities can’t. They have wisdom to offer based on their personal experience and are trusted by the men they mentor. The program was piloted first in Sacramento and has shown early success at meeting the goal of reducing gun violence in high-need communities. As Strategy Program Manager Julius Thibodeaux put it in an interview in spring 2020, “You can’t police yourself out of this [gun-violence] epidemic.”<sup>83</sup> Investing in successful community programs is a sensible alternative.



# PAROLE AND RESENTENCING

In addition to the influence in sentencing practices described above, the Sacramento DA has immense influence over whether a person is detained pre-trial and whether they have access to early release through parole or resentencing.

## Parole

According to Assistant Chief Deputy District Attorney Michael Blazina, there were 139 parole hearings in 2017 and 151 in 2018.<sup>84</sup> The only information Blazina provided about outcomes was that the DA chose not to oppose release in only two of the hearings in 2018. In describing the information the DA's office keeps on file, he said: "It is possible we did not oppose additional releases; however we do not have this information available."<sup>85</sup>

In the years that the DA's office did not track their position, it is reasonable to conclude that it vigorously opposed people's release, as the only available information suggests. According to aggregate percentages, people convicted in Sacramento County are granted parole at a lower rate than the state average.<sup>86</sup> The tables that totaled parole hearings had no reference to outcomes, nor information on the individuals seeking parole. Better tracking is critical for improving pretrial services, probation, and parole.

## Resentencing

While charging and sentencing reforms are urgently needed to stem the tide of mass 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 an individual can be safely returned to their community, the prosecuting agency can recommend their release to the court.

Sacramento County does not appear to have resentenced anyone through this mechanism. The Sacramento DA should adopt resentencing criteria in line with those developed by L.A. DA Gascón,<sup>87</sup> which commits to an expedited review of the following cases:

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

County DAs are granted significant latitude in what cases they consider, and the DA should therefore maximize resentencing recommendations for all people currently in state prisons. The Sacramento DA should prioritize resentencing people serving recent and older sentences for drug possession, considering that possession of methamphetamine continues to be the second-highest sustained charge across all offenses.

# PROBATION AND REENTRY

The Sacramento DA must also support peoples' successful reentry by avoiding punitive restrictions and prosecution during peoples' probationary periods and expanding access to expungement services.

## Probation

Sacramento County Probation's stated goal is to support positive change and reintegration for formerly incarcerated individuals and to ensure that once people leave prison on probation, they do not return. However, the County's practices have resulted in a large population of probationers and long periods of supervision. Roughly 21,000 adults are on probation at any given time, and the median length of supervision is three years. The department also operates the juvenile detention facility in Sacramento and supervises 1,700 youth on probation.<sup>88</sup>

People of color and low-income individuals are disproportionately represented within this probation population, just as they are across the criminal justice system, from arrest to release. Black people make up 11 percent of the county population while accounting for 31 percent of probationers.<sup>89</sup> The department is working to resolve these inequities by prioritizing education, job training, and substance abuse counseling. But the Chief Probation Officer acknowledges they are only "one link in the chain." Cohesive reform across all carceral agencies will be necessary to amend these disparities.

While the department aims to rehabilitate clients, probation often leads to further incarceration. Each year, approximately 15 percent of those on probation end up re-incarcerated due to probation violations.<sup>90</sup> The most common probation violations are positive results on drug tests and property crimes like theft. Those who violate the terms of probation can then face extended supervision or reincarceration. On a number of occasions, the DA has also filed probation violation charges past the term of someone's probation, further stalling their exit from the system.<sup>91</sup>

Local public defenders express particular concern over the excessive use of search and seizure to keep probationers under supervision of law enforcement. Assistant Public Defender John Stoller reports that police stops of probationers have become commonplace, despite the county already paying probation officers to oversee and check in on probationers. The police pull someone over, decide to impound their car, and find probation violations.

In addition to making up a large proportion of the probation population, people of color are stopped and searched at higher rates. The Racial and Identity Profiling Advisory Board in California reported that Black people are more likely to be stopped on the grounds of "reasonable suspicion" as compared to white people,<sup>92</sup> and that "Black people who were stopped for traffic violations were almost three times more likely to be searched than whites."<sup>93</sup> This pattern perpetuates higher rates of incarceration among Black individuals.

Chief Probation Officer Seale reports that he is working to transition his department's focus from "enforcement and interdiction" to rehabilitation. He says he sees the opportunity of probation officers to act as mentors, and refers to those on probation as clients, rather than offenders. He trains probation officers first at juvenile hall to get them attuned to mentorship. In an interview describing his department's work, Seale referred to the transition from an umpire-to-coach mindset, which he attributes to the work of Brian Lovins, President-Elect of the American Probation and Parole Association. Seale explains that "the umpire is neutral, detached, calls strikes when we see them,

enforces rules. The coach wants the player to win, helps develop them, and their role and mindset revolve around the player. There is occasional enforcement, but also warmth, humor, support and understanding.”<sup>94</sup> He’s found that positive strategies are more successful than punitive ones. This aligns with research indicating such an approach is more effective in successfully transitioning individuals out of incarceration.<sup>95</sup>

However, information from local public defenders tells a different story. DA Schubert is reported as seeking the maximum probation sentence of five years whenever she can, and interprets it as part of the punishment, rather than a time for rehabilitation and connection to resources.

## Record Clearance

Record expungement is also critical for allowing people to reintegrate into society and find gainful employment. Over 2018 and 2019, Code for America partnered with a few California counties, including Sacramento, to simplify what would have been a costly and burdensome process. The nonprofit integrated with the county’s IT system and allowed individuals with prior marijuana related convictions to clear their record through an automated online platform.<sup>96</sup>

The initiative led to the dismissal of 1,919 convictions, reduced 3,384 felony convictions to misdemeanors, and cleared the records of 603 individuals.<sup>97</sup> The Sacramento DA could build upon this existing partnership to explore other forms of record expungement beyond marijuana convictions.

Importantly, the Sacramento DA must meaningfully engage impacted communities. By failing to involve community groups in the original pilot announcement, DA Schubert missed an opportunity to engage communities of color despite their leadership in connecting her with Code for America. In the future, allowing community organizations to do this messaging will ensure greater trust and participation.<sup>98</sup>



# LESSONS FROM THE CORONAVIRUS PANDEMIC AND THE MOVEMENT FOR BLACK LIVES

Emergency response to the COVID-19 pandemic has demonstrated the capacity of DAs and judges to rapidly release incarcerated people from custody.

The county jail population decreased by over 500 people during the beginning of the crisis. The Chief Probation Officer ordered law enforcement to stop booking certain low-level offenses against youth and released a third of those in juvenile detention. Probation also eased many requirements associated with pretrial services, including adhering to the statewide directive of \$0 bail for many low-level offenses.<sup>99</sup>

These reforms demonstrate two critical truths about incarceration in Sacramento. First, it is safe to release many currently incarcerated people. Second, the DA, courts, and Probation Department have the power and ability to do so. These facts should ground future work on lowering the county's jail population. Successful responses to COVID must prioritize the health and safety of those within the criminal justice system and those outside it. A humane approach to charging, sentencing, and supervision should inform the decisions of law enforcement, in and out of crisis.

Another national pandemic, of state-sanctioned violence against Black people, produced wide-scale outrage and grief last summer in the wake of the police killings of George Floyd, Breonna Taylor, and numerous other unarmed Black people. The surge of unrest in response to these killings has given the Black Lives Matter (BLM) movement renewed and expanded attention. In particular, BLM has

gained wider recognition among policymakers, and the organization's policy platforms — especially to defund the police and invest in Black communities — have gained serious traction. Defunding prosecutorial power aligns with this movement as well as specific goals outlined in the BLM platform, including ending cash bail and pretrial detention, eliminating the supervision of Black people, ending the use of past convictions in sentencing decisions, eradicating the criminalization of drugs, and demilitarizing law enforcement.

It is critical that the Sacramento DA respond to the realities of the community — and the increasing momentum for reform — rather than uphold practices that are costly, ineffective, racist, and unjust. Criminal justice reform in California will require efforts on many fronts. DA Schubert has consistently stalled local reform efforts while leading the opposition to state measures that would reduce incarceration and racial disparities. In addition, she strongly supported a 2020 ballot measure, Proposition 20, that failed but would have increased incarceration. The Sacramento DA should use their considerable discretion to support state reforms that make the law less punitive while kick starting local changes in Sacramento County that benefit community members.



# INADEQUATE DATA & LACK OF TRANSPARENCY

The DA's existing data collection and reporting protocols are unacceptable and have led to many impediments in analysis. Demographic information such as age, gender, and race, were entirely absent. There was also a fair amount of missing data.

Over 16,000 rows in the disposition column were blank, without indicating whether these were continuing cases or simply untracked. Follow-up communication with the DA's office indicated that most of these cases were continuing, but that the office would have to assess each case independently to understand specific details like whether the delay had to do with a failure to appear in court, a conservatorship, or something else. There is no way to track these differences in the data.

Critical components of the data were reported in an inconsistent manner and made analysis challenging. The sentence column was particularly troubling, using four different metrics for time (hours, days, months, years), incohesive tracking formats (some columns had a total sentence time in state prison in months, others had a combination of months and years, and others included fines in dollars with a plus sign and then the number of days in the Sheriff's Work Project). In some instances, the sentencing data was missing even in completed cases involving a conviction.

Extracting aggregate findings from this data requires additional resources that should not be the responsibility of the public. When asked about these subpar record-keeping practices, the DA's office indicated that the county Superior Court was in charge of keeping this part of the data. The data was also rife with errors and sloppy record keeping, from count numbers that were so high they had to be inaccurate to shorthand that was undefined in the instructions. In addition, the office made a significant reporting error during the first PRA request that went unidentified until the ACLU followed up with clarifying questions about

the data. They had to amend the error and send new data, which delayed the analytical process and required the ACLU to start that process from scratch. Follow-up questions to the DA's office about these gaps in the data went unanswered.

The DA should provide data that is intelligible and prepared for basic analysis, including the publication of demographic data. There are racial disparities in virtually every jurisdiction that tracks demographic data in the criminal justice system. Qualitative research from advocates, lawyers, and government actors in Sacramento also indicates that low-income people of color are disproportionately involved. However, without the data, it is impossible to determine the specific patterns of discrimination in Sacramento County.

Finally, because there is no cohesive way to track data from arrest to probation or parole, it is difficult to analyze the DA's decisions comprehensively. As the Chief Probation Officer acknowledges, eradicating disparities and advancing reforms relies on systemic efforts that go beyond siloed departmental action. A cohesive record of the total number of people impacted across the system is essential to pinpoint problems and opportunities for reform. For instance, it is impossible to know which cases the DA chose not to charge without publishable arrest data. It is also critical that the DA gain a better handle on data tracking individuals from Sacramento in state prison. Knowing the total number of people behind bars, and for what charges, would facilitate reforms customized to the specific challenges of Sacramento County.<sup>100</sup>

Information on the DA's policies was also limited. While the DA has a Legal and Case Prosecution

Manual on its website, the manual is pieced together and far from complete. In addition, details on the office's practices were often concealed as "privileged attorney work product," shielding them from public review and scrutiny.

The San Francisco DA's Office offers a useful model for reform on prosecutorial racial bias based on a foundation of better data. The Blue-Ribbon Panel, instituted by former San Francisco DA George Gascón, which involved an audit of racial bias in SF law enforcement, has been used as a basis for reform. Current San Francisco DA, Chesa Boudin, has also invested in research initiatives. For instance, he commissioned a Racial Disparity Report to examine the entire system for practices and decision points that lead to racially disparate outcomes. The office's commitment to "collecting data from arrest through sentencing and critically assessing policies and practices that underlie prosecutorial decisions," underpins all this work.<sup>101</sup>

The Sacramento DA could make a similar commitment to developing integrated data systems that inform policies to limit the effects of bias. Such reforms could help identify drivers of racial disparities, reshape decision-making protocols, and limit unconscious bias. Improving integrated data tracking should not hold up reform efforts, as there are many other immediate opportunities to reduce disparate outcomes.<sup>102</sup>

## Disparate Impact: People of Color, Youth, and Immigrants

The criminal justice system disproportionately impacts people of color, across every step of the legal system. All levels of government in California must seize on opportunities to eradicate these inequities. The California Sentencing Institute indicates that 48 percent of incarcerated people from Sacramento County are Black despite only making up 11 percent of the county population.<sup>103</sup> However, the DA does not systematically track defendants' race, so there is no way to see how specific decisions like sentencing interact with race. By refusing to track demographic data in a publishable form, the DA can claim ignorance about exacerbating racial disparities in her office's decision-making processes.<sup>104</sup>

Similarly, DA Schubert's office does not collect information on defendants' age. While applauding herself for making "non-traditional" efforts to "get to kids early," before they commit a crime, she has no record of how this is playing out, nor of the degree to which she charges kids as adults or relies on punitive measures.<sup>105</sup> In response to the ACLU's PRA request, her office provided a list of some juveniles who had been tried in adult court, with no justification or background information, and admitted the list may be incomplete because they do not track cases by age. This lack of transparency should be of concern to the public.<sup>106</sup>

There are currently 105 youth in the juvenile detention center in Sacramento, 73 youth in extended foster care, and 60 youth held at the Department of Juvenile Justice (DJJ) or other out-of-state facilities.<sup>107</sup> The numbers of youth in juvenile custody have steadily decreased in recent years, but without data from the DA, it is unclear if these trends have held for youth tried as adults. While campaigning, DA Schubert expressed commitment to prioritizing the "care, treatment, and guidance of the minor consistent with his/her best interest," but without sharing data on age, there's no evidence of such practices.<sup>108</sup>

The lack of information about the immigration status of defendants also merits concern from the public. While the DA lists some practices that may benefit individuals with precarious immigration status in their policy manual, there is no data against which to measure these goals. For instance, through Penal Code 1016.3, the policy manual authorizes prosecutors to consider "adverse immigration consequences in the plea negotiation process as one factor to reach a just resolution."<sup>109</sup> There is no way to tell if prosecutors follow this guidance. Immigrants remain unduly burdened by the consequences of system involvement, especially when it comes to deportation. Certain criminal convictions can result in immigrants being placed in removal proceedings and deported,<sup>110</sup> adding the additional punishment of separating a person from their family, friends, and community.

# RECOMMENDATIONS

The Sacramento DA's Office directs its resources towards practices — across charging, dispositions, and sentencing — that put more people behind bars without improving community welfare.

The DA should decrease the incarcerated population in Sacramento and forge more rehabilitative pathways for struggling residents. The Sacramento DA should pivot away from outdated and ineffective practices, expand existing diversion programs, and invest in improving what's working while creating new opportunities for restorative justice. By intentionally decarcerating jails and prisons through improved prosecution, diversion, and sentencing practices, the DA can open up much needed funding to invest in these reforms and critical public services provided by other county agencies and community-based organizations.

## Altering Charging and Sentencing Practices

Shifts in sentencing policy could significantly decrease incarceration in Sacramento County without increasing crime. DA Anne Marie Schubert should:

- Institute the ACLU's decline to charge and pre-file diversion lists (see Appendix B), which would eliminate roughly half of the DA's caseload;
- Advise all prosecutors to charge wobblers as misdemeanors by default so that fewer decisions are left to the discretion of line prosecutors;
- Eliminate the use of sentence enhancements as a matter of course, as DA Boudin and DA Gascón have done;
- Avoid overly-punitive sentencing by refusing to sentence people to life without parole and the death penalty, as Philadelphia DA Larry Krasner has done, advise prosecutors to avoid maximum sentences for homicide cases when they are not necessary, and consider diversion of

certain violent crime cases to restorative justice forums, as prosecutors in Brooklyn and the Bronx have done;<sup>111</sup>

- Follow the lead of San Francisco DA Chesa Boudin by formally instituting a Sentencing Planning Program that tailors sentencing to better meet the goals of “recidivism reduction and community safety,”<sup>112</sup> which independent evaluators have already found to be effective;
- Do not charge children under 18 as adults;
- Support the creation of an entity entirely separate from the DA's office for the purpose of prosecuting cases against law enforcement officials, which will help remove conflicts of interest;
- Stop accepting donations from police unions, thereby removing their undo influence on campaign finance; and
- Publicly support state legislation to decriminalize low-level “decline to charge” offenses, re-classify wobblers as misdemeanors, and eliminate sentence enhancements.



## Expanding Diversion and Restorative Justice Programs

Sacramento County can safely and substantially reduce the footprint of prosecution and incarceration by improving, expanding, and initiating diversion programs, without widening the net of social control. The DA should:

- Prioritize declining to charge extremely low-level charges whenever possible in order to avoid unnecessarily and harmfully widening the net of system control;
- Adopt the ACLU's pre-file diversion list (See Appendix B), with particular emphasis on building out pre-filing diversion and collaborative court capacity for DUI, petty theft, driving a stolen vehicle, and domestic violence cases;
- Reduce exclusionary criteria, including the imposition of fees, and expand eligibility criteria for diversion programs;
- Expand existing collaborative and community courts, using successful programs in New York as models; and
- Invest in promising preventative community-based programs that can limit individuals' contact with law enforcement in the first place;

Shifting the county's investment in diversion practices will not solve all the problems with the local criminal justice system. Commitments from other governmental actors on housing, education, public health, and economic injustice are also critical. However, these reforms can have a sizable impact limiting how the justice system traps people in a crushing cycle of poverty. Instead, they can facilitate rehabilitation and connect individuals to resources from other governmental programs.

## Parole and Resentencing

While upstream reforms to charging and sentencing practices are necessary to stem the tide of mass incarceration, reducing the number of people currently behind bars without a strong public safety rationale is equally urgent. To safely depopulate jails and prisons, DA Shubert should:

- Institute a parole policy where the Sacramento DA only involves itself in the process to support the release of individuals; and
- Adopt priority criteria for prosecutor-initiated resentencing in line with L.A. DA Gascón's resentencing policy so more people whose incarceration does not serve the interest of justice can return to their communities.

## Probation and Reentry

The population of individuals on supervision through probation and parole can often slip under the radar, but these systems contribute to high levels of incarceration. To limit the number of people under supervision and minimize the long-term harms of mass incarceration, DA Shubert should:

- Stop charging people on probation with drug possession charges that result from vehicle stops based on traffic violations, using Chesa Boudin's policy as a model;
- Partner with the Probation Department to facilitate rehabilitative, rather than punitive management of those on probation;
- Reduce the maximum time of probation to 12 months, as research shows that reducing the probation period saves resources and does not lead to higher rates of recidivism;<sup>113</sup> and
- Capitalize on existing technology in Sacramento County, through Code for America, to increase record clearance so that system-involved individuals can more successfully transition back to society.

## Transparency & Accountability

Better data collection, tracking, and reporting are critical and urgent steps in laying the groundwork for reform. Data can show how and to what extent discretion leads to the discriminatory treatment of people of color. It can also illuminate at what points these disparities originate from prosecutors, police officers, and judges. To improve the data quality of her office, the DA should:

- Track and publicly report demographic information;
- Ensure there is no missing data and review data for errors;

- Streamline metrics for tracking single variables, most importantly sentence length;
- Define disposition codes more comprehensively;
- Publish the length of time people spend on probation;
- Provide instructions that define all shorthand in the data; and
- Build an end-to-end tracking system that follows cases from arrest to parole and probation.

Beyond data, the DA must make a better effort to publish the department's policies so the public can assess them and their alignment with practices.



# CONCLUSION

This report presents findings on the policies and practices of Sacramento DA Marie Anne Schubert's Office to improve public awareness, strengthen accountability, and offer recommendations for structural and policy reforms. The Sacramento DA failed to provide fully responsive records, the data provided had significant amounts of missing or ambiguous information, and no demographic information was shared. Even the incomplete picture provided demonstrates that the Sacramento DA's 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.

By focusing on reducing harsh charging and sentencing, increasing diversion, reducing the number of people on probation and serving excessive sentences, and improving data practices, the Sacramento DA can drastically reduce the harms and costs of incarceration. Broader systemic reform is required to end mass incarceration, and the DA should be a champion, rather than an impediment, to such changes. We strongly urge the Sacramento DA to adopt the policies outlined in this report, and we call on the Sacramento community to hold them accountable for doing so.



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# APPENDIX A

## Budget Comparison: Law Enforcement to Public Defense, 2019–2020 Budget

Appropriation	Amount	Percent of County General Fund Financed by Local Resources
District Attorney	\$62.5 million	8%
Sheriff	\$276.4 million	37%
Court	\$33.5 million	5%
Correctional Health	\$47.2 million	6%
Probation	\$66.9 million	9%
<b>Total Law Enforcement</b>	<b>\$486.5 million</b>	<b>64%</b>
Public Defender	\$43.7 million	6%
<b>Total</b>	<b>\$530.2 million</b>	<b>70%</b>

# APPENDIX B

## List of Low-Level Offenses

The following offenses are low-level, non-violent acts that the DA should decline to charge or send to default pre-plea diversion to decrease the number of people incarcerated in the county:

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

## Public Records Request to Sacramento DA

The following document is the request sent to the Sacramento County DA's office on May 13, 2019. The responsive documents can be made available upon request.



AMERICAN CIVIL LIBERTIES UNION  
FOUNDATION

Northern  
California

May 13, 2019

**Via U.S. Mail and Email**

**District Attorney Anne Marie Schubert**  
**Sacramento County District Attorney's Office**  
**901 G Street**  
**Sacramento, CA 95814**  
[daoffice@sacda.org](mailto:daoffice@sacda.org)

**Re: Public Records Act Request**

Dear District Attorney Anne Marie Schubert:

We write to request the release of public records from the Sacramento 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<sup>1</sup> 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 Sacramento 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 Sacramento County after any one of the following:

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

**American Civil Liberties Union of Northern California**

EXECUTIVE DIRECTOR Abdi Soltani • BOARD CHAIR Magan Pritam Ray  
SAN FRANCISCO OFFICE: 39 Drumm St. San Francisco, CA 94111 • FRESNO OFFICE: PO Box 188 Fresno, CA 93707  
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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 Sacramento 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 Sacramento county.
- d. Unique case identifiers, charges, enhancements and outcomes (including diversion) of all felony charges for minors and adults in Sacramento 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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