



# Race and Prosecutions

2017 Update

A Report of the Santa Clara County

District Attorney's Office

Jeff Rosen, District Attorney



## FORWARD

One year ago, my Office began studying race as a factor in the way we prosecute criminal cases. We asked ourselves difficult questions: Are we being fair in the way criminal cases are prosecuted in our courts, and even before they get to court? Is our justice system fair to everyone? They were vital and difficult questions then. They remain vital and difficult questions today.

While we haven't completely answered the questions, we are making significant progress in a new initiative to closely examine how we make decisions on 40,000 criminal case each year. Improvements in our methodology and data collection will make the ongoing study more accurate and comprehensive. Our partnership with academic think tank BetaGov in examining race and prosecutions has been highly fruitful. With their help, we generated the first results of an experiment intended to evaluate the fairness of our prosecutorial decisions. These results, I am pleased to report, are positive. They seem to indicate that our prosecutors are making decisions free from any discernable implicit or explicit bias. These results are positive, but they are also preliminary. We are committed to dig even deeper into our data.

In this updated report, you will also find our latest statistics, including breakdowns of charged defendants by race and by zip code, and an analysis of sentencing put together by our newly-created Crime Strategies Unit.

Our examination of this data is a process, and will not result in a finished product. Disproportionality within the criminal justice is likely to be a persistent, pernicious problem. We will not shirk from it. The fight to make sure that the system is fair to every person in our community may not be won in a year, or 10. We will work toward that goal, growing better and fairer, as a prosecutor's office and as a community.



Jeffrey F. Rosen  
District Attorney

## **Introduction**

In 2016, the Santa Clara County District Attorney's Office released its first comprehensive report on Race and Prosecutions data. The report sought to determine whether racial disproportionality exists in the county's prosecuted population, and to explore the racial disparities that did emerge. The 2016 report showed that racial disproportionality exists in nearly every part of the prosecution process: when the case arrives at the DA's Office, when the case is charged, and when a decision is made as to the type of case that is charged.

The key goal for us is to determine whether the way criminal cases are prosecuted once they arrive at the Office contributes to that disproportionality. From the initial filing decision to the eventual settlement negotiations, the Office seeks to eliminate any practices, overt or unintentional, that may contribute to racial inequity. The first step is to thoroughly understand what the racial composition of our defendant population looks like at the various stages of the process. To help accomplish this task, we made changes to both our scope and methodology.

In the Spring of 2016, the largest team in the Office by volume of cases, the Central Misdemeanor Team, completed a six-month transition to going completely paperless. Narcotics misdemeanor cases soon followed, as did misdemeanor cases in our North County Office. By the end of this calendar year, all misdemeanor prosecutions (75% of the cases prosecuted by this Office) by all teams in the Office will be paperless. By having all of our misdemeanor cases managed and prosecuted entirely through our electronic case management system, we now have the electronic access to study and evaluate our work. Previously this would have required an examination of thousands of paper files.

Second, the methodology in this report has been improved. Last year's report focused on the cases filed themselves, and the race of the defendants in each filed case. That meant that if a filed case had two defendants, the race of the perpetrators was only counted as one – for one case. While this had the advantage of analyzing the data by filed cases, it had the disadvantage of missing some defendants in the study. This year, our report counts each defendant in every case, so that if a filed case had two defendants, it will count for two in this analysis.

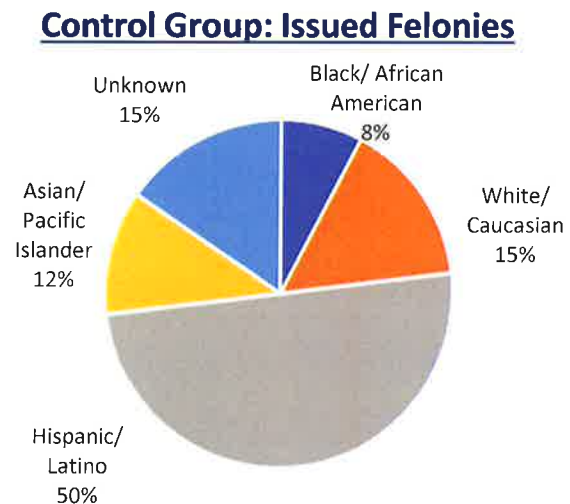
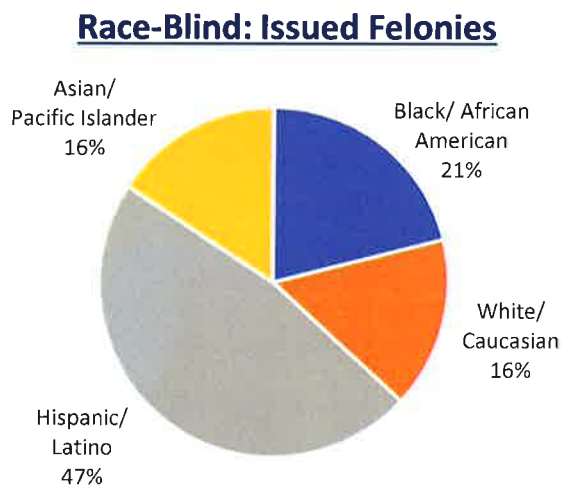
This year's report compares the newest data to prior years to see whether we continue to see similar racial disproportionality. In short, we do. We believe that charting these statistics will improve our methodology and, hopefully, help us reduce any biases hidden within the system.

## **BetaGov Experiment**

An ongoing study of prosecutorial decisions by the Office's Issuing Unit, so far, shows no implicit or explicit bias in our charging decisions.

After consulting with statisticians and academics from BetaGov, the DA's Office developed the race-blind controlled study of case issuing and negotiating practices. To try to measure if there were any measurable differences, BetaGov removed racial identifiers from 74 cases before they were brought to the prosecutors in the Office's Issuing Unit for consideration. To do so, racial identifiers (names, references to race) were redacted from the police reports in the study. Three categories of felony cases were included: Felony Assault (PC 245), Robbery (PC 211), and Vehicle Theft (VC 10851). These crimes were chosen because they are numerous and allow for a broad range of issuing decisions and sentences. For example, the sentence for a felony assault can range from community service to a lengthy prison term. Prosecutors were first asked to make a race-blind charging decision, then were asked to make a race-blind settlement offer. During the study, half of the reviewed cases were redacted (race-blind) and half were not redacted (control group) to allow the study to compare the results. In the initial review, the issuing rates on felony cases seem to be statistically similar to the control group.

It is important to note that cases that required review of photos, surveillance video or police body worn camera video needed to be removed from the trial, as did cases where a decision to file criminal charges needed to be done quickly. These restrictions limited the sample size, and may have affected the outcomes as well.

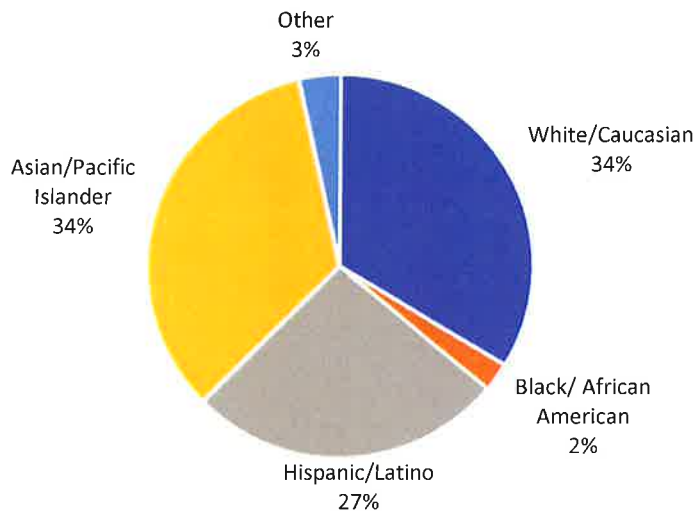


Conducting this study proved challenging. The process of removing racial identifying information is time-consuming and sometimes impossible due to the nature of the case. As the study progresses, a much more robust sample size will reveal more about whether measurable human bias enters at the charging stage of a criminal case.

## Demographics of Santa Clara County

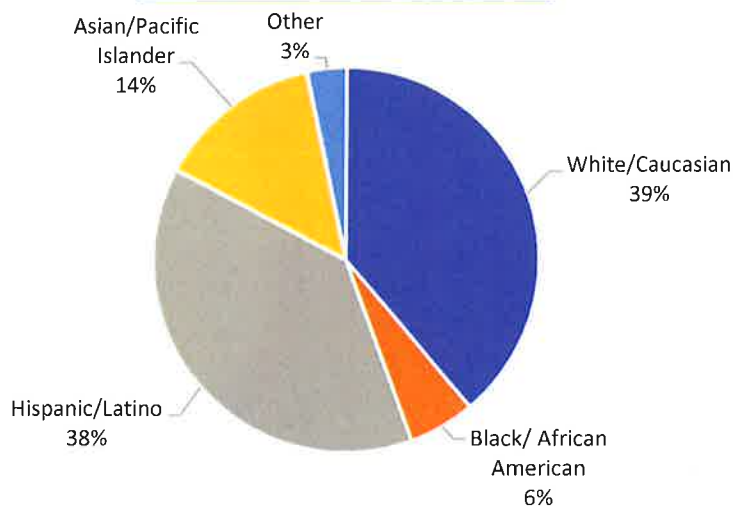
Santa Clara County is one of the largest counties in California, with nearly 2 million residents. The 15 cities in the county are diverse, and have widely different racial compositions. Santa Clara County overall has the highest median income of any California county, and has one of the lowest unemployment rates in the state. The county's wealth is not evenly distributed among and between cities or races. Overall, the county's racial and ethnic breakdown is displayed next to California's overall population data:

### 2015 Santa Clara County Population



Source: US Census, 2015 American Community Survey

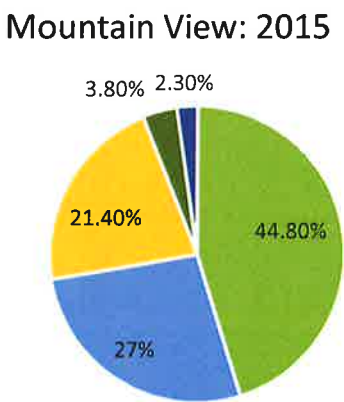
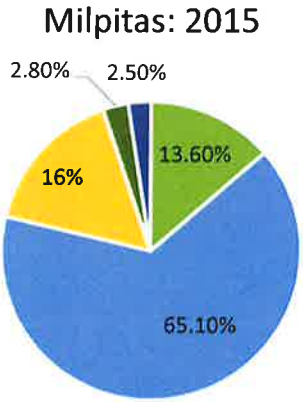
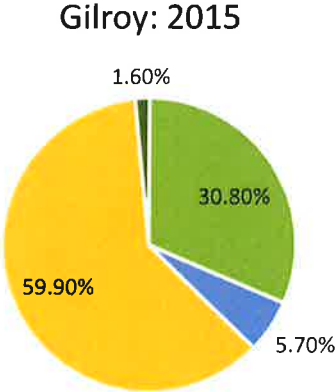
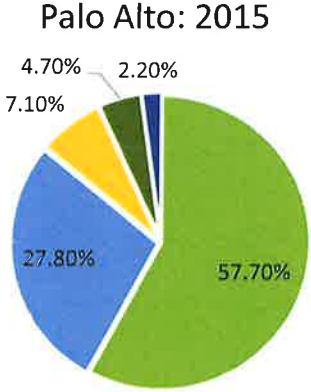
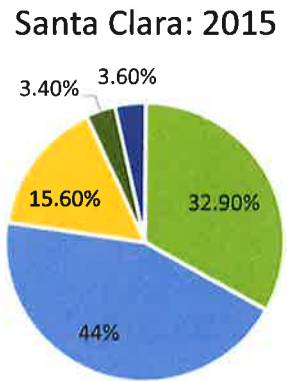
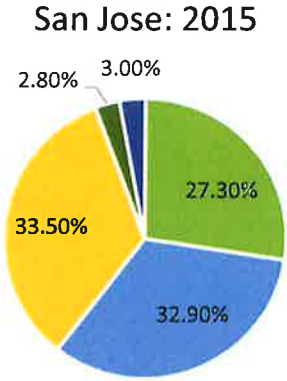
### 2015 California Population



Source: US Census, 2015 American Community Survey

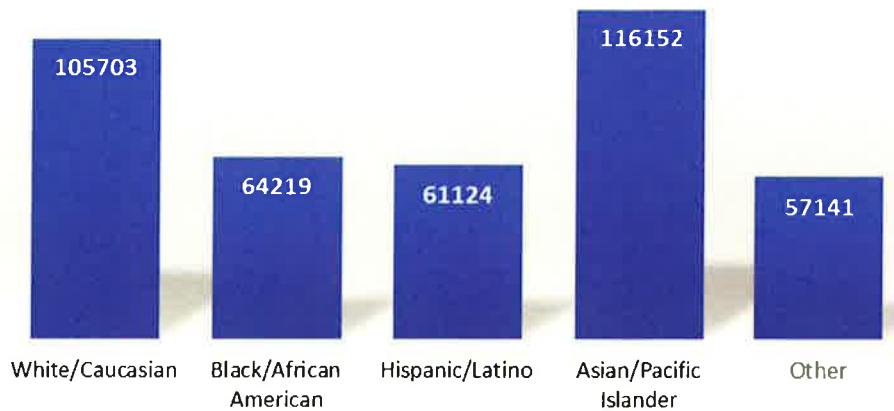
A side-by-side comparison of the racial composition in the County's largest cities shows how each city has a slightly different racial and ethnic breakdown from the County average. San Jose's demographics are the most like Santa Clara County, but Gilroy, Milpitas, and Palo Alto each have a single race with 50% or more of the population.

■ White/Caucasian  
 ■ Hispanic/Latino  
 ■ 2+ Races  
 ■ Asian/Pacific I.  
 ■ African Amer./Black



While Santa Clara County has the highest median income in the state, economic disparity exists among and between cities in the county. Income levels are equally racially disparate. Asian and White residents had significantly higher median incomes than Black and Hispanic residents.

### Median Household Income: 2015



### Education

High school dropout rates are much higher for African American/Black and Hispanic/Latino students in Santa Clara County compared to White/Caucasian or Asian/Pacific Islander students. The educational data tends to mirror the disproportionality in the criminal justice system.

#### Percent of Students Not Completing High School, by Race/Ethnicity: 2015

Hispanic/Latino	20.8%
African American/Black	14.9%
White/Caucasian	4.5%
Asian/Pacific Islander	3.1%

Source: KidsData.org

## **How Prosecutions Begin – Filing Criminal Charges:**

Prosecutions begin with a submission to the District Attorney’s Office of police reports, documents, recordings, photos and other materials. Then, prosecutors review those materials to determine whether to file criminal charges. That means that the suspects who are being considered for the potential filing of criminal charges are those who the police agencies arrest or investigate.

The District Attorney’s Office reviews those documents to determine:

- Whether a crime has been committed;
- Whether we know who committed the crime;
- Whether we can prove the case in court beyond a reasonable doubt; and
- Whether prosecuting the case is the right thing to do.

The most important decision prosecutors make is whether to charge someone with a crime. Our latest data shows that there are nearly equal rates of cases charged when analyzed by race/ethnicity. In 2016, the Office filed charges in 84.1% of reviewed felony cases and 84.1% of reviewed misdemeanor cases. The only deviation from this average is in misdemeanor cases, Asian suspects were filed against in 79.8% of the cases reviewed, about 5-10% less than the average.

	<b>% Felonies Charged</b>	<b>% Misdemeanors Charged</b>
White/Caucasian	83.8	86.3
Black/ African Amer.	82.6	86.9
Hispanic/Latino	86.7	87.5
Asian/ Pacific Islander	82.5	79.8
Other	80.3	80.4
Unknown	73.5	76.6

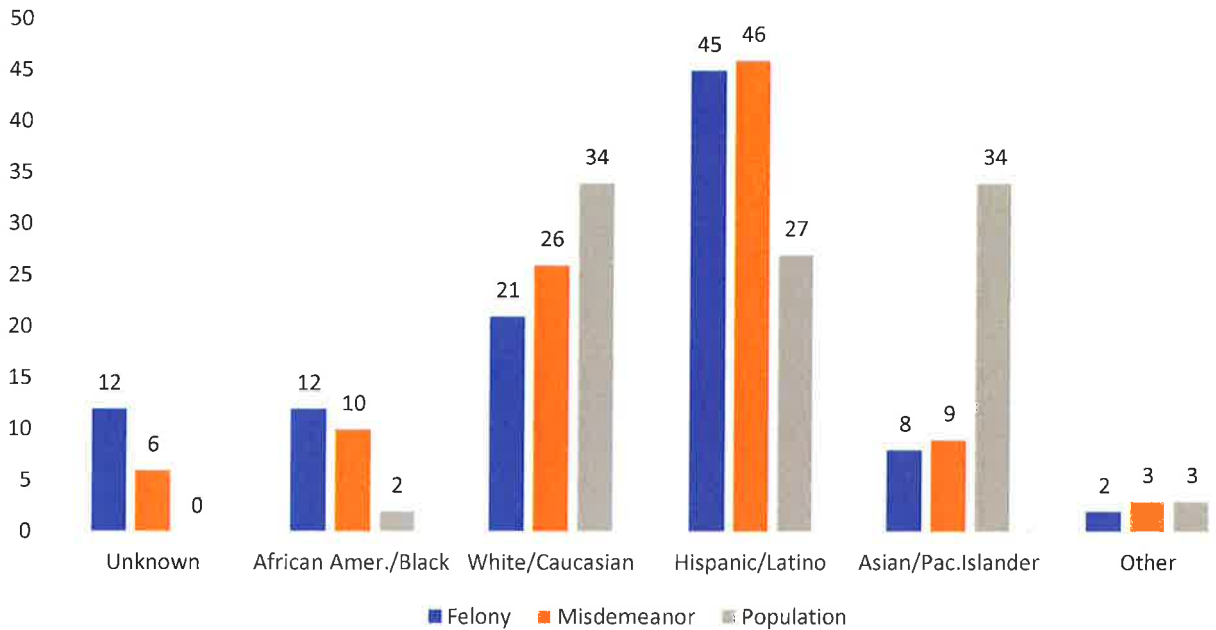
## **Racial Composition of Those Prosecuted Compared to the Racial Composition of the County:**

When compared to the racial make-up of our County, we prosecute a higher percentage of Hispanic/Latino and Black/ African-American defendants compared to their representation in our community. We prosecute a lower percentage of Asian/Pacific Islander defendants compared to their representation in the community.

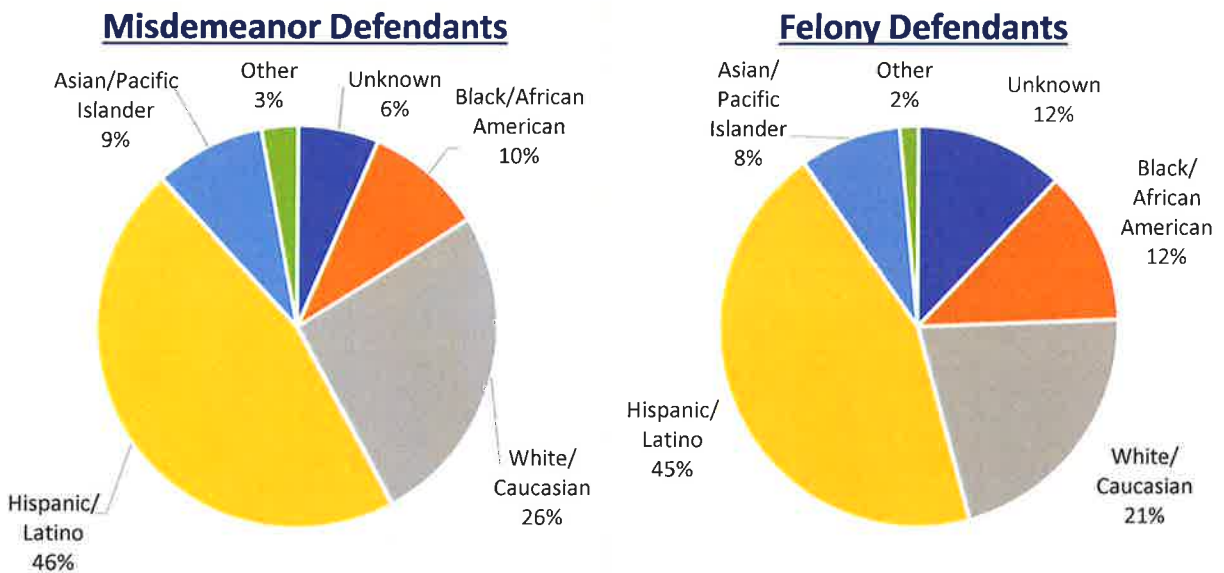
White/Caucasian defendants are prosecuted at a percentage closest to the percentage of White/Caucasian residents in our County. As discussed here, race and ethnicity are based on the defendant’s self-identification at booking or arrest. “Unknown” does not mean that a person does not know their racial or ethnic identification, but rather that that information was not entered into the electronic database to tabulate these totals.



## Felony & Misdemeanor Defendants: 2016



As with prior years, the racial disparities that exist in felony cases are even more pronounced, with 12% of felony cases involving Black/African American defendants, and 21% of felony cases involved White defendants.



## Zip Code Analysis

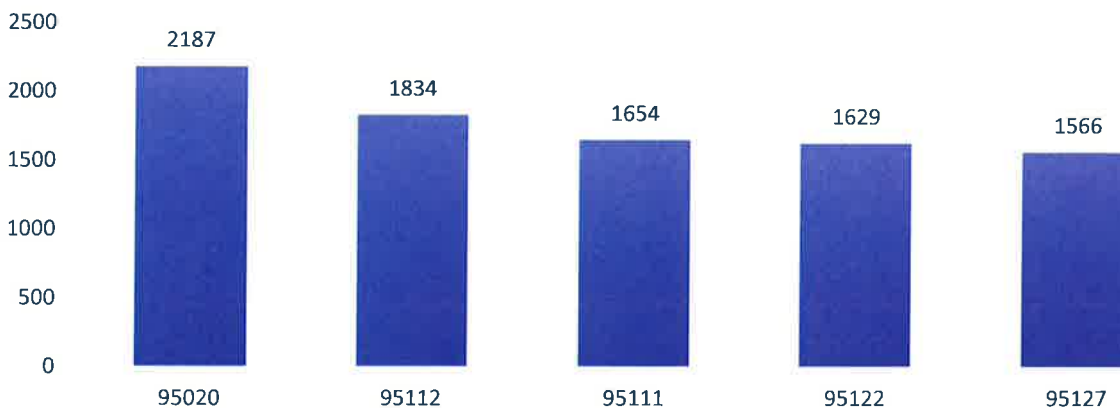
The Santa Clara County Public Health Department compiles robust data about education, employment, health and safety for each of the zip codes in the County.

	County Overall	95020 (Gilroy)	95112 (Downtown San Jose)	95111 (Southeast San Jose)	95122 (East San Jose)	95127 (East Foothills)
Median household income	\$93,854	\$82,748	\$49,454	\$57,047	\$57,470	\$70,692
Unemployed	9%	11%	13%	13%	12%	12%
Families below Poverty Line	16%	25%	37%	38%	39%	26%
Children below Poverty Line	25%	42%	50%	49%	53%	40%
Overcrowded households	8%	10%	13%	19%	25%	16%
Average # of violent crimes within 1 mile	16.04	12.4	72.73	23.09	39.25	29.9
Adults reporting neighborhood crime is somewhat or a major problem	42%	63%	66%	75%	81%	63%
Adults with fair or poor self-rated health	19%	85%	74%	69%	62%	72%

*Source: 2017 Santa Clara County Department of Public Health*

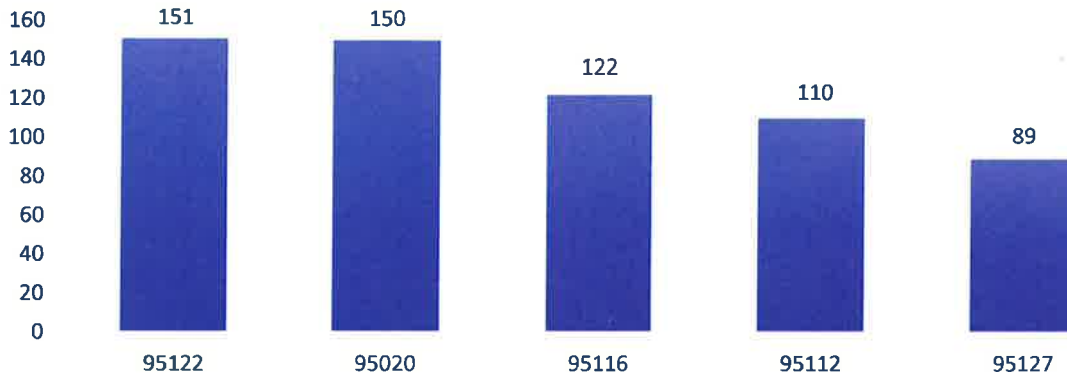
Another facet to understanding prosecution disparity is to geographically pinpoint the areas of the counties where the defendants live. Examining 2016 charged cases, we found that five zip codes have the lions' share of the county's criminal defendants: 95020 (Gilroy), 95112 (Downtown San Jose), 95111 (Southeast San Jose), 95122 (East San Jose) and 95127 (East San Jose/Foothills).

### Charged Defendants by Zip Code (2016)



Looking more closely at our defendant zip codes, we find that they most commonly reside in poorer, more dangerous, and less healthy neighborhoods. This is equally true of our county's victims of crime.

### Victims Served by VSU by Zip Code (2016)

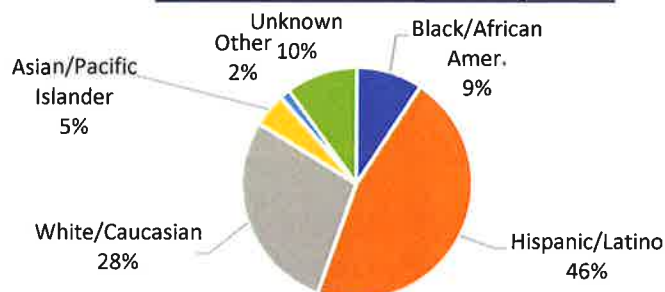


The District Attorney's Office uses this zip code data to set policy in addressing the unique needs in these parts of the County. The Community Prosecution Unit is specifically stationed in Gilroy, Downtown San Jose and East San Jose, partnering with these communities to understand their needs and to help set crime prevention policies. Prevention efforts are an important part of the District Attorney's role in stemming the flow of new criminal behavior. The efforts of the Community Prosecution Unit have been instrumental in addressing the unique needs of these neighborhoods.

### Homeless Defendant Population

It can be difficult to accurately measure the homeless defendant population in our county. One way to analyze the issue is by examining the population who listed their address as "transient" at the time of arrest. This occurred in 893 cases brought to the DA's Office in 2016. This population had 166 cases for felony charge review and 713 cases for misdemeanor review. The racial composition of the transient population reveals a disproportionately high number of Black/African American individuals as compared to community representation. The 5% of transient defendants who identify as Asian or Pacific Islander is far below their representation in the community.

### Transient Defendants by Race

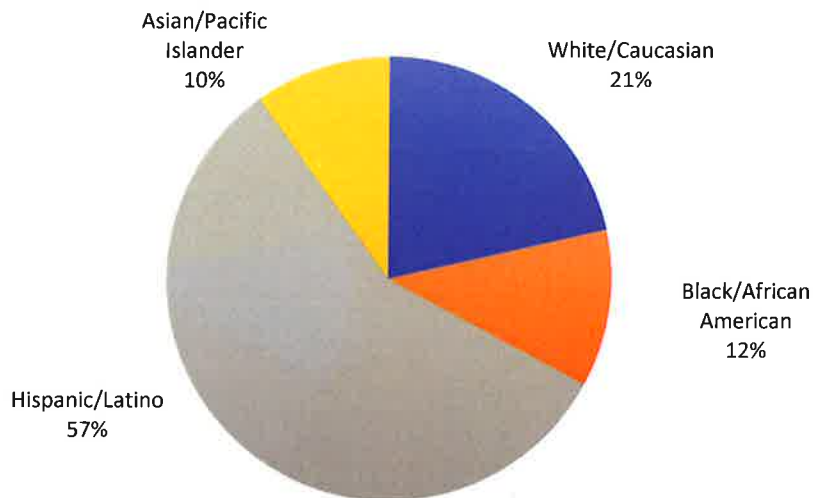


## **CSU Sentencing Analysis**

An important part of the prosecution process is fairness and consistency in sentencing. The prosecutors often make the settlement offers which will determine a defendant's fate. Sentencing practices and data are extremely difficult to track with existing technology. Despite the difficulties, The Office has launched an effort to analyze sentencing practices in Santa Clara County. To start, the Crime Strategies Unit studied 230 felony files to determine trends in sentencing, delay and offer practices. As part of the study, three categories of felony cases were included: Felony Assault (PC 245), Robbery (PC 211) and Vehicle Theft (VC 10851). These categories were chosen to mirror the BetaGov trial and to help better understand how these commonly filed felonies are handled in the office. Of the 230 files included in the study, 158 (69%) resulted in a probation and county jail sentence, while 70 (30.4) of the cases resulted in a prison sentence.

In the cases where a prison sentence was imposed, further analysis revealed that a disproportionately high number of Black and Hispanic defendants were sentenced to prison as compared to their representation in the community.

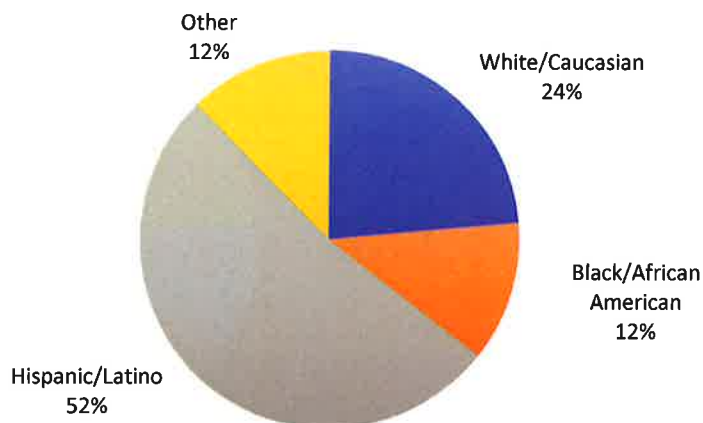
### **2017 Sentencing Study: Prison Sentences**



## **Prison Populations**

The California Department of Justice maintains data on the racial composition of the prison population at the Department of Corrections. This data is somewhat incomplete, as it does not include Asian/Pacific Islander as a category. However, looking at the racial composition of Santa Clara County's prison population, it roughly tracks with the overall defendant breakdowns analyzed elsewhere in this report.

## Prison Pop. from Santa Clara County



### Is the Racial Composition of Defendants Charged with Crimes Similar for Different Types of Crimes?

The percent of defendants prosecuted from different racial groups holds remarkably consistent across all crime types regardless of how the crime is reported; whether it be by car stop (DUI), face-to-face police encounter (being under the influence of narcotics), 911 call (Domestic Violence cases), detective investigation (burglary cases), or involving resisting arrest<sup>1</sup>.

For example, the percentage of Hispanic/Latino defendants prosecuted across all crime types is about 45-50% of all defendants prosecuted – nearly double their representation in the County.

This is true for charges:

- a. Where the case began with a car stop, like a DUI (50% of DUI misdemeanors);
- b. Where the case began with a 911 call, like most domestic violence cases (51% of the most commonly charged domestic violence cases);
- c. Where the case began with an in-person street encounter like being under the influence of a controlled substance (46%);
- d. Where the case was solved by a police investigation, like most residential burglaries (46%);
- e. Where the case involved resisting a police officer (51%).

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<sup>1</sup> A more precise breakdown of race/ethnicity by charged offense is included in the appendix to this report. Not included in this study are major fraud, real estate fraud or other types of economic crimes. These crime types involve fewer charged cases per year and will require additional study to produce reliable data.

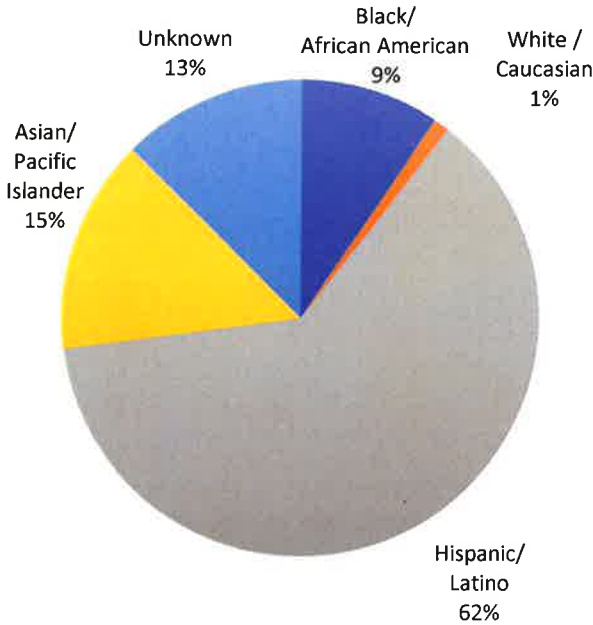
That is not to say that Hispanic/Latino adults are more inclined to commit crimes, or that Hispanic/Latino adults are more likely to be arrested by the police. This data cannot be used to support either of these or any other conclusion. Further analysis that factored in variables such as income levels, education, policing policies, or adverse childhood experiences would alter these results. What can be concluded is that the disproportionate composition of Hispanic/Latino defendants being prosecuted does not change when you look at different kinds of crimes that are investigated in completely different kinds of ways.

**Gun and Gang Cases:**

An area where the racial disparities are particularly pronounced is in cases where a gun was used or where a criminal street gang enhancement was alleged, under Penal Code 186.22. Hispanic defendants are largely over-represented in both categories, relative to their share of the population.

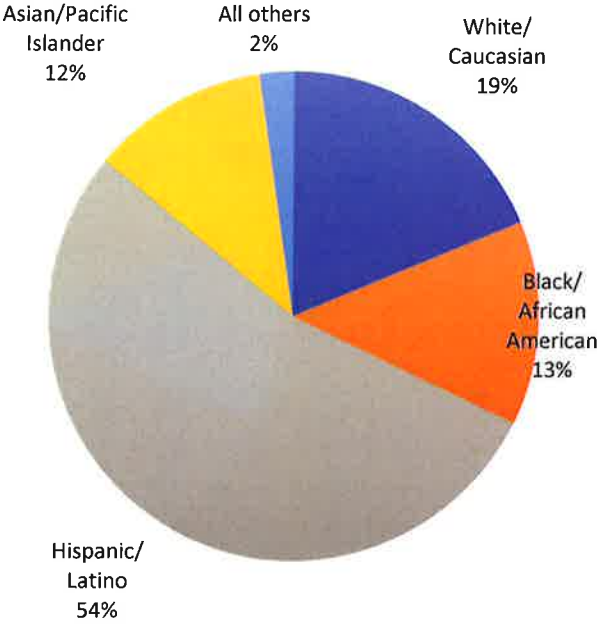
**Charged Gang Enhancements:**

**2016**



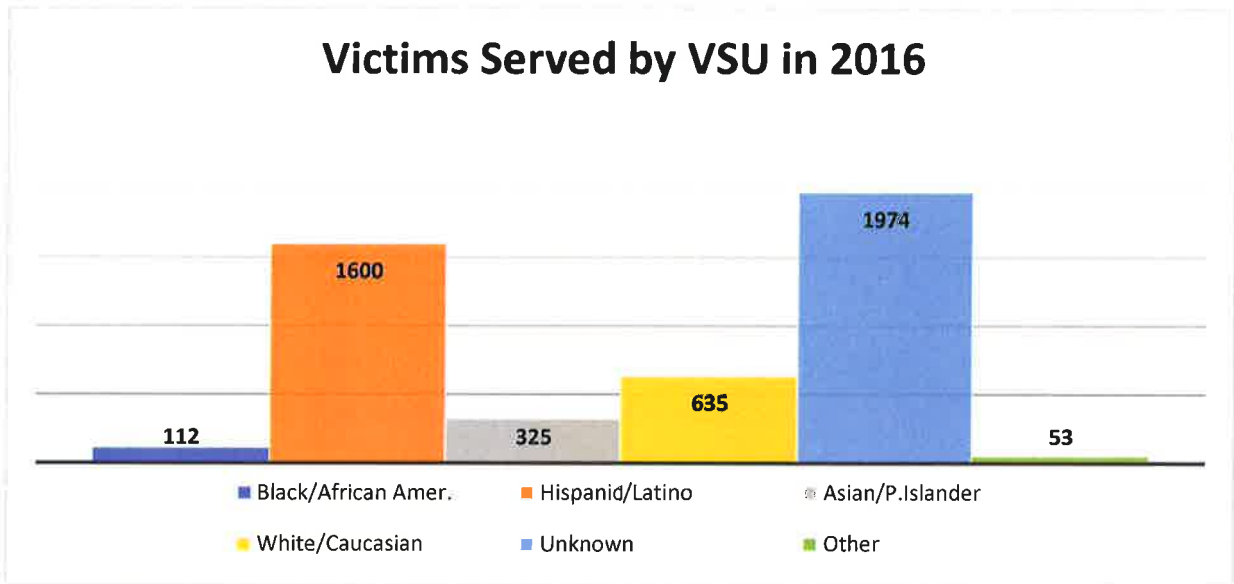
**Charged Gun Enhancements:**

**2016**



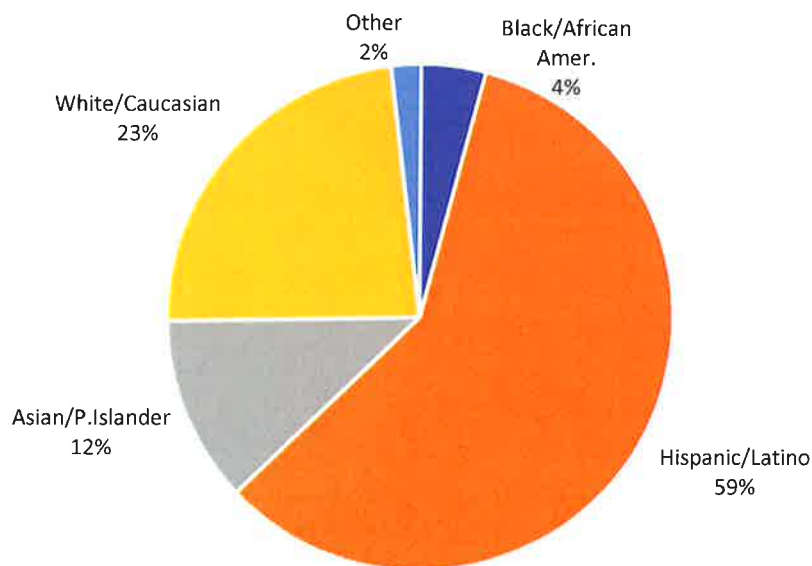
## Victim Services

The DA's Victim Services Unit works diligently to understand and serve the needs of our community's victimized population. The Victim Services Unit served 4,699 crime victims in 2016. Race information is requested during intake interviews. About 42% of victims declined to state a race at intake.



Of the known victims served by the Victim Services Unit, 59% report to be Hispanic/Latino, while just 12% report as Asian/Pacific Islander.

### Reported Victim Race: 2016



## **Next Steps:**

- This Office will continue to study race and fairness issues with BetaGov. It will report back to the community the results of these studies, including the ongoing race-blind study of case issuing.
- We will improve our collection of data. Not complete in this data, for example, is the race of all defendants charged through a police officer citation, such as Driving on a Suspended License. Citations make up by our estimates as many as 25% of all cases prosecuted by the DA's Office. Through our new process of paperless misdemeanor prosecutions, we have begun the process of tracking all citations electronically, and that conversion is expected to be completed by the end of this year.
- We will continue to the practice of analyzing our internal data in coming years. Prosecutors must be aware of the social context of their work to make fair, informed decisions.

## **Conclusion**

The racial disparities in our justice system are statistically clear. However, they cannot be understood or improved simply by studying prosecution data. In the coming years, the DA's Office will continue to seek better, fairer processes at every level of the justice process – both within the Office and without. We will seek it in the communities most impacted by crime, in the populations most victimized by crime, in the populations most affected by prosecutions, and – of course - within our own Office. Our hope is that continued research, transparency around that research will help bring us all toward greater understanding of this complex and critical issue. With greater understanding, we aspire to a criminal justice system that protects our community with vigor, balance, and fairness toward all.