Race and Prosecutions

2018 Update

A Report of the Santa Clara County
District Attorney’s Office
Jeff Rosen, District Attorney
Introduction

Racial disproportionality in our criminal justice system remains a stark and vexing problem. While we do not have a solution for it yet, we are determined to continue to study the issue in hopes to understand it better. One day, we hope to see a system that is as humanly fair and free of bias as possible.

To continue the process of getting there, the Santa Clara County District Attorney’s office has greatly expanded the collected data for our Race and Prosecutions Report for 2018, the third such collation. In this year’s report, the District Attorney’s Office continues to examine race in our criminal justice system, and looks at other data that may be connected to involvement in the criminal justice system: income inequality, juvenile safety, education and early life inequality.

Newly-collated for this report we report income, unemployment and poverty stats on the five zip codes where the greatest number of defendants come from. We have included data on health from those zip codes, data on housing over crowdedness from those zip codes, and on the perceptions of safety by the residents in those zip codes.

We have also expanded the race-based data we collect on youth crime, victimhood and even perception of safety in our community and schools.

Previously we had reported drop-out rates by race in our County. Now the youth data is greatly expanded to also include perceptions of safety at school by racial groups in our County, physical fighting at school by race, self-identification as gang-affiliated by race in our youth.

Our ongoing effort to study racial disproportion began in 2016, with the Santa Clara County DA’s Office first comprehensive report on Race and Prosecution Data. The report sought to determine whether racial disproportionality exists in the County’s defendant population, and to explore the racial disparities that did emerge. The 2016 report showed that racial disproportionality between the percent of defendants from different racial and ethnic groups compared to Census data about our county’s racial composition exists across all crime types, and in cases investigated by the police in all different ways.

In 2017 the DA’s Office partnered with the non-profit research organization BetaGov to study internal office procedures, in an effort to identify whether decisions made within the DA’s office led to further disproportionality. This random control trial study did not find any disproportionality or bias in the decisions made by deputy district attorneys at the charging stage of a case.

Our goal is to build each year on our understanding of racial disproportionality, eventually creating a long-term and layered database of statistics that we can use to tackle and diminish it.
**Demographics of Santa Clara County**

Santa Clara County is the largest county in Northern 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 ranks 4th in the state for employment. The county’s wealth is not evenly distributed among and between cities or races, as seen in the charts below:

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1. **US Census, 2016 American Community Survey**
2. **US Census, 2017 American Community Survey 5-Year Estimate**
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 as a whole, but Gilroy, Milpitas, and Palo Alto each have a single race with 50% or more of the population.
Zip Code Analysis

In both the adult and juvenile populations, there are 5 primary zip codes that represent the lions’ share of the criminally charged. In 2017, the adult and juvenile population’s top five zip codes of residence for individuals charged with a crime were: 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 (2017)

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. Looking more closely at our defendant zip codes, we find that defendants most commonly reside in poorer, more dangerous, and less healthy neighborhoods. One particularly important statistic involves the share of the population who feel that crime is a major problem. In the County overall, 42% of residents feel that crime is a problem, whereas that number is nearly double that, 81%, in East San Jose. In Downtown and East San Jose, the median household income is far below the County average, with twice the number of residents living below the poverty line. Perhaps unsurprisingly, Santa Clara County ranks among the highest in the nation for income inequality.³

In examining data from the Santa Clara County Department of Public Health’s surveys, and data from the United States Census Bureau, we can see some of the differences in these regions:

<table>
<thead>
<tr>
<th></th>
<th>County Overall</th>
<th>95020 (Gilroy)</th>
<th>95112 (Downtown San Jose)</th>
<th>95111 (Southeast San Jose)</th>
<th>95122 (East San Jose)</th>
<th>95127 (East Foothills)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median household income</td>
<td>106,761</td>
<td>90,144</td>
<td>60,569</td>
<td>66,549</td>
<td>66,606</td>
<td>84,239</td>
</tr>
<tr>
<td>Unemployment Rate</td>
<td>5.7%</td>
<td>6.0%</td>
<td>7.7%</td>
<td>7.5%</td>
<td>8.0%</td>
<td>6.8%</td>
</tr>
<tr>
<td>Families w/ children below Poverty Line</td>
<td>7.4%</td>
<td>13.1%</td>
<td>14.0%</td>
<td>17.7%</td>
<td>17.9%</td>
<td>10.8%</td>
</tr>
<tr>
<td>Children below Poverty Line</td>
<td>9.7%</td>
<td>18.4%</td>
<td>15.9%</td>
<td>22.4%</td>
<td>20.2%</td>
<td>15.0%</td>
</tr>
<tr>
<td>Adults with fair or poor self-rated health</td>
<td>19%</td>
<td>85%</td>
<td>74%</td>
<td>69%</td>
<td>62%</td>
<td>72%</td>
</tr>
<tr>
<td>Adults reporting neighborhood crime is somewhat or a major problem</td>
<td>42%</td>
<td>63%</td>
<td>66%</td>
<td>75%</td>
<td>81%</td>
<td>63%</td>
</tr>
</tbody>
</table>

What Can Be Done About County Inequality and Specific Zones of Crime?

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, working to understand the needs of those neighborhoods and to set crime prevention policies in those communities. 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.

Criminal Prosecution:

Prosecutions begin when investigating agencies submit criminal cases to the District Attorney’s office for review. These case submissions often include police reports, documents, recordings, photos and other materials. 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 submitted case 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

One of the most important decisions prosecutors make is whether to charge someone with a crime. So we examined whether there was a difference in the rate at which charges were filed

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against a suspect based on race/ethnicity. As seen below, the percentage of cases charged was nearly constant across all races and ethnicities.

<table>
<thead>
<tr>
<th></th>
<th>% Felonies Charged</th>
<th>% Misdemeanors Charged</th>
</tr>
</thead>
<tbody>
<tr>
<td>White</td>
<td>83.8</td>
<td>86.3</td>
</tr>
<tr>
<td>Black/ African Amer.</td>
<td>82.6</td>
<td>86.9</td>
</tr>
<tr>
<td>Hispanic</td>
<td>86.7</td>
<td>87.5</td>
</tr>
<tr>
<td>Asian/ Pacific Islander</td>
<td>82.5</td>
<td>79.8</td>
</tr>
<tr>
<td>Other</td>
<td>80.3</td>
<td>80.4</td>
</tr>
<tr>
<td>Unknown</td>
<td>73.5</td>
<td>76.6</td>
</tr>
</tbody>
</table>

**Race of Prosecuted Defendants:**

Clear racial disparities appear in the relative percentages of prosecuted defendants as compared to their representation in the community. To see this troubling pattern, we examined the percentages of our total prosecutions for adult felonies and misdemeanors against people of different racial or ethnic groups. 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.

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 in a percentage that is closest to their makeup of our County.
**Youth Indicators of Racial Disparity:**

Long before racial inequity presents in the adult criminal population, there are complex social factors that seem to contribute to early disparities in education, safety, wealth and health among minority communities in Santa Clara County. The Crime Strategies Unit and the Community Prosecution Unit at the DA’s office have worked hard to identify and address the root causes of the racial disparity we see among the young people within the criminal justice system. The DA’s Community Prosecutors work on Juvenile-based programming and intervention, with the aim of decreasing recidivism and preventing the county’s youth from crime, arrest, convictions and incarceration.

To understand some of the root causes of racial disparity, we looked at existing data on some of these factors. One major source was The California Healthy Kids Survey (CHKS), which is a statewide survey of student sentiment.

This report also looked at studies published by the Santa Clara County Juvenile Justice Commission along with internal D.A. Office data to determine whether early inequities existed in the data.
Perceptions of School Safety, by Race/Ethnicity:

As seen in this table, youth in Santa Clara County report feeling mostly safe in school. However, the youth who reported feeling the most unsafe were Hispanic/Latino (5.4% were unsafe/very unsafe), Pacific Islander (9.9% felt unsafe/very unsafe) and African American/Black (9% felt unsafe/very unsafe). Some of that perception may be related to the other indicators of school safety seen in the following charts: Fighting at school and Self-Reported gang membership, which exist in higher percentages for African American and Hispanic/Latino youth.

Physical Fighting at School, by Race/Ethnicity  

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Self-Report Gang Membership, by Race/Ethnicity

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Yes</td>
</tr>
<tr>
<td>African American/Black</td>
<td>7.4%</td>
</tr>
<tr>
<td>American Indian/Alaska Native</td>
<td>1.7%</td>
</tr>
<tr>
<td>Asian</td>
<td>2.2%</td>
</tr>
<tr>
<td>Hispanic/Latino</td>
<td>6.6%</td>
</tr>
<tr>
<td>Native Hawaiian/Pacific Islander</td>
<td>3.0%</td>
</tr>
<tr>
<td>White</td>
<td>3.4%</td>
</tr>
<tr>
<td>Multiracial</td>
<td>4.0%</td>
</tr>
<tr>
<td>Other</td>
<td>3.2%</td>
</tr>
</tbody>
</table>

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. In California, the average percentage of students not completing High School is 10.7%.

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hispanic/Latino</td>
<td>20.8%</td>
</tr>
<tr>
<td>African-American/Black</td>
<td>14.9%</td>
</tr>
<tr>
<td>Filipino</td>
<td>4.6%</td>
</tr>
<tr>
<td>White</td>
<td>4.5%</td>
</tr>
<tr>
<td>Asian-American</td>
<td>3.1%</td>
</tr>
<tr>
<td>2+ Races</td>
<td>6.2%</td>
</tr>
</tbody>
</table>

Juvenile Prosecutions:

A major focus of the Crime Strategies Unit in 2018 has been to better understand why some juvenile crime in Santa Clara County seems to be increasing. The Crime Strategies Unit looked at the racial/ethnic composition of juveniles charged with felony offenses, and found disparity that was more pronounced than in adult court. The charts below depict the racial composition of charged minors in juvenile court:

8 California Dept. of Education, California Longitudinal Pupil Achievement Data System (CALPADS) (May 2016), at www.kidsdata.org
Clearly, racial disparity exists in every charged category of filed juvenile cases. This is a focus of the Juvenile Justice Commission, the Probation Department, the Juvenile Court and the District Attorney’s Office. Much work has been done to discuss and address these issues in schools and in the juvenile justice system, with much more to be done.

**Victim Services**

Between 2017 and 2018, the D.A. Office’s Victim Services Unit served nearly 10,000 victims of crime, rendering an array of services from counseling to restitution. This unit, comprised of victim advocates and support personnel, resides at the D.A.’s office and provides a critical support network to those who have been impacted by crime. In order to understand the needs of the served victim population, VSU began collecting self-reported demographic information on the victims served. White and Asian/Pacific Islander are the two populations who seem under-represented in the victim services population, even though those populations are not necessarily less-likely to be victims of crime. This suggests that outreach to these groups may yield greater participation in the justice process and/or the receiving of valuable support services.
Gun and Gang cases:

One 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. As seen, the Hispanic/Latino and Black/African-American defendants are largely over-represented in both categories, relative to their share of the population.
What is the DA’s Office Doing to Understand and Address Racial Disparity?

Upon releasing the first “Race and Prosecutions” report in 2016, the District Attorney’s office began taking a more systematic approach to studying its own data. In October 2016, D.A. Rosen created a Crime Strategies Unit, designed to find data-driven solutions to crime, and to study internal and external prosecution data.

BetaGov Trial

The D.A.’s Office partnered with the nonprofit BetaGov to study whether human bias may play a role in charging decisions. After consulting with statisticians and academics from BetaGov, the D.A.’s Office developed a race-blind controlled trial of issuing and negotiating practices to see if it revealed any implicit bias in prosecution practices. The trial involved removing racial identifiers from prosecutors’ consideration when deciding whether to file criminal charges. Racial identifiers (names, references to race) were redacted from the police reports, and three categories of felony cases were included in the sample: Felony Assault (PC 245), Robbery (PC 211) and Vehicle Theft (VC 10851). 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. The study is ongoing, but in the initial review, the issuing rates on felony cases seem to be statistically similar to the control group. The one exception was for African-American/Black defendants where more felonies were issued in the race-blind than in the control group.

Importantly, 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.
There were 74 cases in the initial study. Conducting this trial 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 whether measurable human bias enters at the charging stage of a criminal case.

**Prevention and Outreach**

The Community Prosecution Unit at the DA’s Office continues to work with youth, communities of color and justice System Partners to address social root causes of crime. Our community prosecutors work in the zip codes most affected by crime and social inequality in order to prevent crime through early advocacy and support. We continue to invest in this program as preventing crime is as important as prosecuting crime in Santa Clara County. This team will continue to partner with the Crime Strategies Unit to understand the data behind race and prosecution.
RACE OF SANTA CLARA COUNTY RESIDENTS

Source: US Census Bureau, 2015 American Community Survey
37.1% of Santa Clara County residents were born in another country (2010 study by USC)
MEDIAN HOUSEHOLD INCOME IN SANTA CLARA COUNTY

Median Household Income: 2017

<table>
<thead>
<tr>
<th>Ethnicity</th>
<th>Median Household Income</th>
</tr>
</thead>
<tbody>
<tr>
<td>White/Caucasian</td>
<td>118,236</td>
</tr>
<tr>
<td>Black/African American</td>
<td>71,493</td>
</tr>
<tr>
<td>Hispanic/Latino</td>
<td>69,052</td>
</tr>
<tr>
<td>Asian/Pac.Islander</td>
<td>128,927</td>
</tr>
<tr>
<td>Other</td>
<td>63,576</td>
</tr>
</tbody>
</table>

2017 American Community Survey, US CENSUS DATA
# Percent of Students Dropping Out of High School by Race

<table>
<thead>
<tr>
<th>Race/Ethnicity</th>
<th>Percent</th>
</tr>
</thead>
<tbody>
<tr>
<td>Hispanic/Latino</td>
<td>20.8%</td>
</tr>
<tr>
<td>African American/Black</td>
<td>14.9%</td>
</tr>
<tr>
<td>Filipino</td>
<td>4.6%</td>
</tr>
<tr>
<td>White</td>
<td>4.5%</td>
</tr>
<tr>
<td>Asian American</td>
<td>3.1%</td>
</tr>
<tr>
<td>2+ Races</td>
<td>6.2%</td>
</tr>
</tbody>
</table>

*Percent of Students Not Completing High School, by Race/Ethnicity: 2016*
RACE OF DEFENDANTS IN FILED MISDEMEANORS 2013-2017

**Filed Misdemeanors 2013-2017**

- **White/Caucasian**: 25%
- **Black/African American**: 11%
- **Hispanic/Latino**: 46%
- **Asian/Pacific Islander**: 7%
- **Other**: 3%
- **Unknown**: 8%

**RACE BY PERCENTAGE: 2017**

- **White/Caucasian**: 25%
- **Black/African American**: 11%
- **Hispanic/Latino**: 46%
- **Unknown**: 8%
- **Other**: 3%

<table>
<thead>
<tr>
<th>Year</th>
<th>Filed Misdemeanors</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>19,905</td>
</tr>
<tr>
<td>2014</td>
<td>21,951</td>
</tr>
<tr>
<td>2015</td>
<td>22,551</td>
</tr>
<tr>
<td>2016</td>
<td>23,848</td>
</tr>
<tr>
<td>2017</td>
<td>29,462</td>
</tr>
</tbody>
</table>
RACE OF SUSPECTS IN NON-FILED MISDEMEANORS FROM 2013-2017

Non-Filed Misdemeanors 2013-2017

<table>
<thead>
<tr>
<th>Year</th>
<th>Number</th>
</tr>
</thead>
<tbody>
<tr>
<td>2013</td>
<td>3418</td>
</tr>
<tr>
<td>2014</td>
<td>3949</td>
</tr>
<tr>
<td>2015</td>
<td>3444</td>
</tr>
<tr>
<td>2016</td>
<td>4534</td>
</tr>
<tr>
<td>2017</td>
<td>4347</td>
</tr>
</tbody>
</table>

RACE BY PERCENTAGE: 2017

- **White/Caucasian**: 26%
- **Hispanic/Latino**: 41%
- **Black/African American**: 9%
- **Asian/Pacific Islander**: 12%
- **Unknown**: 9%
- **Other**: 3%
Note that the passage of Proposition 47 in November of 2014 reclassified five felonies as misdemeanors.
Note that the passage of Proposition 47 in November of 2014 reclassified five felonies as misdemeanors.
## 2017 Comparison of Percentage Race in Filed and Non-Filed Misdemeanors and Felonies

<table>
<thead>
<tr>
<th>Race</th>
<th>Filed Misdemeanors (%)</th>
<th>Non-Filed Misdemeanors (%)</th>
<th>Filed Felonies (%)</th>
<th>Non-Filed Felonies (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black/African American</td>
<td>11</td>
<td>9</td>
<td>13</td>
<td>13</td>
</tr>
<tr>
<td>Hispanic/Latino</td>
<td>46</td>
<td>41</td>
<td>45</td>
<td>42</td>
</tr>
<tr>
<td>White/Caucasian</td>
<td>25</td>
<td>26</td>
<td>21</td>
<td>22</td>
</tr>
<tr>
<td>Asian/Pacific Islander</td>
<td>7</td>
<td>12</td>
<td>8</td>
<td>9</td>
</tr>
<tr>
<td>Unknown</td>
<td>8</td>
<td>9</td>
<td>11</td>
<td>12</td>
</tr>
<tr>
<td>Other</td>
<td>3</td>
<td>3</td>
<td>2</td>
<td>2</td>
</tr>
</tbody>
</table>
The following slides address different crime types that the District Attorney’s Office prosecutes and examines the race of the defendants prosecuted across different crime types from 2013 to 2017.
Assault With a Deadly Weapon or By Force Likely to Cause Great Bodily Injury Felonies; PC 245(a)

This information reflects the following: 245(a)(1), 245(a)(2), 245(a)(3) and 245(a)(4) PC.
Drug Possession Misdemeanors; H&S 11377 (possession of methamphetamine)

Note that after the passage of Proposition 47 in November of 2014, a violation of H&S 11377 could only be charged as a misdemeanor and not as a felony.
Resisting Arrest
PC 148

This information reflects the following: 148(a)(1), 148.3(a), 148.4(a)(1), 148.4(a)(2), 148.5(a), and 148.9
This information reflects the following: 23152(a), 23152(b), 23153(a), 23153/23566(a), 23152(c), 23152(e) and 23152(f)
DUI Felonies
VC 23152/23153

Total in 5 Years: 484

RACE BY PERCENTAGE

- Hispanic/Latino: 65.33%
- White/Caucasian: 16%
- Asian/Pacific Islander: 5.33%
- Black/African American: 2.67%
- Others: 2.67%
- Unknown: 2.67%

This information reflects the following: 23152/23550(a), 23152/23550.5(a)
Residential Burglaries
PC 460(a)

PC 460(a)
Total in 5 Years: 1,696

RACE BY PERCENTAGE

White/Caucasian 21.75%
Asian/Pacific Islander 4.87%
Hispanic/Latino 50.65%
Black/African American 10.39%
Unknown 10.06%
Other 2.27%
Robbery
PC 211

PC 211
Total in 5 Years: 1,636

This information reflects the following: 211-212.5(a), 211-232.5(b), 211-212.5(c) and 211-213(a)(1)(A)
Misdemeanor Domestic Violence
PC 243(e)

PC 243(e)

RACE BY PERCENTAGE

- Hispanic/Latino: 50%
- White/Caucasian: 22%
- Asian/Pacific Islander: 9%
- Black/African American: 7%
- Unknown: 9%
- Other: 3%

Yearly Data:
- 2013: 787
- 2014: 752
- 2015: 735
- 2016: 709
- 2017: 672
Corporal Injury on a Spouse
PC 273.5

This information reflects the following: Misd & Felony level of 273.5(a), 273.5(e)(1), 273.5(f)(1), 273.5(f)(2) and 273.5(e)(2)
It should be noted that when two or more people are involved in a killing then this data reflects each of those charged, even though there may be only one homicide victim. This information reflects the following: 187, 664(a) 187 and 664(e) 187 PC.
HS 11550 Misdemeanor
Under the Influence of Controlled Substance
[Police Contact Often Face To Face]

This information reflects the following: 11550(a)(1) and 11550(e)
White Collar Crime: 2016
[Insurance Fraud, Workers Comp. Fraud, Elder Abuse]

This information reflects the following: PC 550, IC & LC violations, PC 368
The following slide addresses the racial breakdown of victims of violent crime assisted by the District Attorney’s Office Victim Services Unit in 2015. It should be noted that there was a dramatic increase in victims served in the second half of 2015 after VSU moved in-house to the District Attorney’s Office.
2017-2018 Victims of Violent Crimes assisted by DAO-VSU (where victim stated race at intake interview)

- Hispanic/Latino: 34%
- Other/Unknown: 36%
- White/Caucasian: 17%
- Black/Af. American: 4%
- Asian/P. Islander: 9%