

“Bend the Arc” Reforms Update

Community Initiatives

- The DAO will create a DA Citizens Academy at community colleges.

A DA Citizens Academy, not only raises awareness about how the criminal justice system works, encourages recruitment of a wide group of people to become lawyers and prosecutors so that the DA’s Office continues to look more like the community it serves, but also provides a new avenue for community engagement with the work of the DA’s Office and how it can better serve the community.

Progress: The first DA Citizens Academy will be offered at Gavilan College. Implementation has been delayed due to COVID. We are working with Dr. Robert La Carrera regarding implementation.

We envision four to six weekly one-hour sessions where the topics may include (1) education about our office and the services provided; (2) discussion of filing guidelines and sentencing considerations; (3) discussion with a prosecutor/police officer of color regarding why they pursued a career in law enforcement; (4) discussion with special guest(s) regarding the impact the criminal justice system had on their lives.

- The DAO will set up Victim Services Office Hours with Community Based
- In order to ensure that all victims of crime receive victim advocacy and victim services – even those from communities who might be reluctant to come to a government office – we will send victim advocates to organizations in the community to make those connections and provide this vital assistance.

Progress: The pandemic closed the offices of many community-based organizations, who pivoted to other kinds of work, other than in-person work, delaying our in-person office work with community partners. Even so, our efforts with Community Based Organizations over the last year were many, diverse, and provided critical assistance to victims.

Here is some of the work we did with Community Based Organizations this past year, and in outreach to reach, help, and serve as many as we could:

- *The Gilroy Strong Resiliency Center partnered with multiple Community Based Organizations to provide services in person and virtually to the Gilroy community suffering from the effects of the mass shooting at the Garlic Festival and the repeated mass shootings around the country.*
- *The Children’s Advocacy Center, which we opened a few months ago to provide services all under one roof for child victims of sexual and physical abuse, has*

Community Based Organizations on-site and fully integrated into the work that the medical, law enforcement, and social services agencies do with us there.

- *The South County and San Jose Family Justice Centers re-opened for in person services at Community Solutions and at Asian Americans For Community Involvement. We send our victim advocates there in person to be on hand and to work with our partners there to assist victims of intimate partner violence.*
- *The VTA Mass Shooting was a tragic event. We led the victim services for all in the VTA Family in the hours and weeks after the shooting, in close partnership with the American Red Cross, the Bill Wilson Center's Centre for Living with Dying, County Behavioral Health and a multitude of Community Based Organizations. We opened a Family Assistance Center at the American Red Cross less than six hours after the shooting.*
- *We participated as a panelist in a National Crime Victims' Rights Week presentation for Maitri. Maitri is a free, confidential, nonprofit organization based in the San Francisco Bay Area that primarily helps families and individuals from South Asia (Afghanistan, Bangladesh, Bhutan, India, Nepal, Pakistan, Sri Lanka, and the Maldives) facing domestic violence, emotional abuse, cultural alienation, or family conflict.*
- The DAO will use Asset Forfeiture funds to award monetary grants to community-based organizations that are successfully addressing racial inequities in our community.
 - Using the money seized from gangsters, drug traffickers and criminal organizations to fund agencies and organizations that help address racial inequities and fill opportunity gaps, re-seeds the community with funds taken from those criminals who work to tear it apart in ways that can reduce racial

Progress: DA Rosen gave out \$50,000 in grants to 13 community groups working for racial justice. See release.

- All-gender bathrooms will be available in the DAO.
 - One of the important ways to make all victims, witnesses, law enforcement officers, community members, and employees welcome and accepted is to provide an all-gender bathroom for trans and non-binary individuals.

Progress: Plans are moving forward to convert existing bathrooms in the DA's Office to all-gender bathrooms that will be available for all to use. These will be the first all-gender bathrooms in the entire County Government Center. We are partnering with Fleets and Facilities and the County Executive's Office to make this happen, and to make sure that the new facilities are compliant with the Americans With Disabilities Act, and the most welcoming that they can be.

- The DAO will set up a Worker Exploitation Task
- A key way to fight discrimination against immigrant communities is a task force that will launch targeted investigations to protect and heal the victims of labor trafficking, wage theft and illegal exploitation and raise awareness about how these insidious crimes negatively impact our communities of color.

Progress: The Work Exploitation Task Force (WE TF) launched on 09/10/2020 and was met with instant success and the new investigative model is being taught and imported by DAs offices throughout the state. During the pandemic and lock down, WE TF received an overwhelming response from those agencies invited. The goal of the task force was laid out: to investigate all worker exploitation through an integrated agency approach sharing information on unscrupulous employers. We had representatives, now task force members, from the following agencies:

- State Labor Commission (SLC)
- California Department of Insurance (CDI)
- Department of Industrial Relations (DIR)
- SCC District Attorney Worker Compensation Fraud Division
- Employment Development Department (EDD)
- Contractors State Licensing Board (CSLB)
- SCC Office of Labor Standards and Enforcement (OSLE)
- SCC Human Trafficking Task Force (LEIHT)
- Alcohol Beverage Control (ABC)
- State of California Insurance Fund (SCIF)
- Department of Labor (DOL)
- Department of Homeland Security (DHS)

The WE TF currently has six cases in which TF members are collaboratively working. WE TF members working joint cases meet regularly outside the quarterly meetings to share information, form joint investigative strategies, and further the mission.

- The DAO will safely expand diversion and sentencing alternatives to incarceration, including primary care, mental health diversion, young adult diversion, and home detention.
- For some crimes, and some people charged with crimes, we can achieve appropriate accountability, and provide the tools to prevent re-offense without an expensive and sometimes counterproductive stay in jail. Expanding the use of these programs, and creating new ones not only is smart in the use of public funds, but it works to reduce the incarceration of racial groups that are over-represented in our criminal justice system.

Progress: The District Attorney entered into an amended MOU with the director of Pre-Trial Services to expand the list of eligible misdemeanor offenses for

prefiling diversion. Persons referred to PTS through PFD must complete a Behavioral Cognitive Therapy class, perform community service, and pay restitution where appropriate. In exchange for completing the program, there are no criminal charges filed in Superior Court.

The District Attorney established Officewide Guidelines for Judicial Diversion in response to the passage of AB 3234. For defendants not eligible for Pre-Filing Diversion due to the nature of the offense or their criminal history, a grant of judicial diversion will require the defendant to complete a court ordered program, perform community service, and where appropriate, pay restitution. Successful completion of judicial diversion will result in dismissal of the criminal complaint in Superior Court.

Internal Policies and Practices

- The DAO will rewrite its formula for filing charges to give more weight to race and equity issues.
- In most cases, the DA's Office does not investigate crimes or arrest people. We review and prosecute cases that are brought to our Office by the police. But we do have a large role in the criminal justice system - not only in deciding whether to file criminal charges in court, but in deciding what charges to file. We are making explicit in our policies and practices that our charging decisions should not be about finding all the ways to incarcerate someone for as long as possible but should instead be about holding someone accountable for the wrong that they committed in a way that is fair and equitable for all racial and ethnic groups.

Further, if we know, and we do know, that the criminal justice system has included an outsized number of Latino and African American defendants in our community for a long time, that effect is cumulative over time in the criminal records of people who may have been stopped by the police more often than people in other communities for similar conduct. Recognizing that fact, we will consider in our charging decisions past crimes that are recent, violent, or related to the kind of crime being charged now – and not charge sentencing enhancements drawn from distant parts of a person's record that are unrelated to the crime currently committed.

When filing charges, we will ask ourselves, "What SHOULD we charge, not what CAN we charge."

Progress: A new charging policy has been written and undergone review and input.

- The DAO will make the "Brady List" available to prosecutors when they are making filing decisions.

- Using the Brady List when deciding whether to file charges ensures that we consider a police officer's past misconduct, including past use of excessive force or dishonesty when deciding whether to file charges against someone that officer arrested today and will make our prosecutions fairer to all communities.

Progress: SuDDA's and issuing attorneys now have access to the Brady List before making filing decision.

- The DAO will invite defense attorneys to send us social history and mitigation statements at any time: pre-filing or post-filing.
- We often receive information from the defense that changes the way we view what the punishment for a crime should be or what the correct charges for a crime should be. But for most cases, we receive that information long after a criminal case has been filed and has been in court. Currently, when we do get that information before the filing of criminal charges, it is mostly from wealthy individuals and their private defense. Inviting public defenders to present that information before we have even filed criminal charges, and at the earliest stages of a prosecution, will make sure that we understand the circumstances that lead to this crime for all defendants from all rungs of our socio-economic ladder.

Progress: This has been communicated to the defense bar. We have also collaborated with the Public Defender's Office for "Rapid Representation" contacts including innocence claims that may result from a weekend interview with a public defender. The PD's Office has been provided a list of people to contact to discuss pre-arraignment release and charging issues.

- The DAO will not charge gang enhancements for misdemeanor crimes, absent extraordinary public safety concerns.
- Latinos are over-represented in the gang filings in our county. A gang enhancement charged for a misdemeanor crime elevates the misdemeanor to a felony. By not charging gang enhancements for misdemeanor crimes, we will reduce the long-term felony impact of this misdemeanor conduct on predominately Latino individuals in our community, while still holding them appropriately responsible for the crimes they have committed.

Progress: We have not filed a gang enhancement on a misdemeanor case since this reform was enacted.

- The DAO will create a "Diversity, Race and Equity Committee" to apply a race and equity lens to the DAO's policies practices, and procedures.

- The Diversity Committee has focused and succeeded in recruiting individuals from under-represented groups to become prosecutors. Now the committee will expand its work to review all policies and practices of the DAO to ensure our prosecutions are fair to all racial groups.

Progress: Lead by Assistant DA David Angel, this committee is managing our new BTA grant community grant program.

- The DAO will do a training about our yearly race and prosecution study and Bay Area racial history.
- A key component of policy and case-specific changes to make the system of justice more fair is understanding how our system currently has disproportionately high numbers of Latino and African-American defendants, and understanding the social and historical forces that have affected how we got to this point.

Progress: The Office has done two comprehensive trainings in the past year.

- *On August 12, 2020 Yale Professor and Director of Yale's Ethnicity, Race, and Migration Program, Stephen Pitti, spoke to our office via Zoom to talk about some of the foundations of Silicon Valley and how the "devil of racism" against Mexican-Americans has shaped those foundations. From treatment by missionaries, to treatment by the quicksilver mining business, to housing discrimination post- World War II, to issues that still resonate today, Professor Pitti will talk about how past discrimination has shaped our community, and how the effects of that past discrimination continue to influence it.*
- *On September 16, 2020, SuDDAs Chris Arriola, Marisa McKeown, and ADA James Gibbons-Shapiro discussed the race and ethnicity of who we prosecute, and how that is the same and different across crime types. We talked about filing decisions, victims of crime, and the things we still do not have good tools to analyze about the work we do. We discussed some of the other things that are also true about race in our County from household income, educational attainment, immigrant communities, and the intersections of these. The goal of the training was for us all to have a fluency in the facts about our County, our office's work, and the effects of past and the possible effects of future reforms on these.*
- The DAO will create a staff lawyer rotation through the Conviction Integrity Unit.
- Having all prosecutors work in reviewing cases of potentially wrongful convictions is crucial work for all prosecutors to avoid the mistakes of the past, that sometimes have been influenced by implicit biases.

Progress: prosecutors have begun rotating through the unit.

- The Office will create Sentinel Event Reviews for OII's, wrongful charging, wrongful convictions and jail deaths.
- Engaging all prosecutors in reviewing cases where the DAO has determined that a conviction was unlawful, makes all of our prosecutors aware of the mistakes we and our law enforcement partners have made, including circumstances where implicit bias may have influenced bad decisions.

Progress: We have two cases currently going through a sentinel event review.

- *The first involves a wrongfully filed case. We dismissed the charges, but we should never have filed. It is currently going through the process with the lead being taken by the Quattrone Center.*
- *The second involves the dismissal of a case and an informant. JGS and I are conducting now. It is already clear that this will lead to valuable protocol changes.*
- The DAO will do an annual office training on diversion programs and sentencing alternatives to incarceration.
 - One of the ways to decrease the disproportionately high numbers of Latinos and African Americans in our criminal justice system is to make better use of programs available to everyone that provide alternatives to incarceration. Because of that over-representation, increased use of these programs available for everyone will have a disproportionately positive affect on Latino and African American defendants.

Progress: we created a new Misdemeanor Diversion Protocol implemented through a training to the Misdemeanor Unit.

- The DAO will make it mandatory for all prosecutors to visit jails and prisons.
 - One of the ways to really understand the disproportionate numbers of Latino and African American defendants in our criminal justice system is to see it in a jail or prison. Seeing the jail or prison in person also brings home what it means to seek a prison sentence for a crime. Without both of those understandings, prosecutors will be less able to make our system fairer for everyone.

Progress: We initiated Main Jail tours for prosecutors in 2015 along with San Quentin tours. Post-COVID, all prosecutors who have not toured a penal institution will be required to do so.

- The Office will expand lawyer "Ride Alongs" with police officers to include time spent with community-based organizations.

- Spending time in the first year as a prosecutor, not just with the police on a ride-along, but also with organizations addressing poverty and racism in our community, makes brand new prosecutors understand more broadly the community we are working to keep safe, and to think about the broader racial and socio-economic issues that affect police officers, victims, defendants and witnesses in court.

Progress: Due to the Pandemic, the requirement for attorneys to perform “ride alongs” was suspended for everyone’s safety. The requirement for attorneys to complete these “ride alongs” is being ramped up and the Office returns to normal operations.

The DAO will add a section in the prosecutor promotional application about addressing race and equity.

- Requiring prosecutors to demonstrate how they have worked to promote race and equity inside and outside of court in order to be promoted creates an individual obligation to do this important work and underscores the DA’s priorities to improve fairness.

Progress: The promotion application has been updated and distributed to all attorneys seeking promotion. In section I of the application, applicants for promotion must describe a case or situation they handled that required sensitivity to race and equity in the criminal justice system.

Robust and Independent Review of Criminal Police Misconduct

- The DAO will create a Public and Law Enforcement Integrity Team. The PLEI Team will work closely with the San Jose Independent Police Auditor, as well as the Internal Affairs Units in all county law enforcement agencies to investigate criminal misconduct of officers including excessive use of force. The PLEI Team will have two to three prosecutors and one to two investigators. If an officer has broken the law, PLEI will determine whether PLEI should keep the case, or it should go to a different team in the DAO, depending on the nature of the crime. The PLEI Team will proactively train law enforcement agencies what incidents to forward to the DAO. The PLEI Team will also train the DAO on what cases should be sent to PLEI for review, if DA staff come across information that may consist of criminal officer misconduct.
- In order for all racial groups in our community to trust the police and to trust the criminal justice system, we need to ensure that when officers break the law, they are held accountable.

Progress: The PLEI Team is in full operation. The team is staffed by an Assistant District and three deputy district attorneys, one investigator, and one paralegal. The Team has collaborated with the internal affairs units of various law enforcement agencies in the county for the receipt and review of cases involving potentially criminal conduct by members of the agency, including police officers. The Team has filed criminal charges against law enforcement personnel for misusing police databases and against three police officers for using excessive force. The Team has proactively reached out to law enforcement agencies to review cases that have received public scrutiny (e.g., use of police dogs to apprehend violent suspects). And the Team has worked with prosecutors assigned to the complaint team to make sure that any case involving potentially criminal conduct by a police officer is referred to PLEI for review. Due to the publicity of the PLEI Team, several police officers have contacted the Team to lodge complaints against their fellow officers for violation of departmental policy and acts of dishonesty that merit review.

The DAO will review all body worn camera footage before issuing any PC 148 or similar charges. The DAO will also codify practices on reviewing PC 148 cases, including discouraging the issuing of stand-alone PC 148 (unless extraordinary circumstances), and feedback to police departments both positive and negative on PC 148 charges.

- When someone has been arrested for the crime of resisting or delaying a police officer, but not for any other crime, we need to only file those cases in extraordinary circumstances, like when someone is trying to prevent a police officer from contacting a witness. Reviewing all body-camera video in cases of resisting arrest and decreasing the filing of these charges as stand-alones, will reduce incidents of excessive force and increase the trust of law enforcement by all racial groups in our community.

Progress: This protocol has been changed and last year 2020 saw a 61% reduction in charges filed for this crime compared to 2019 (note that cases sent to our office for review fell by 12.5% in 2020).

The PC 148 charging policies have been implemented and communicated to staff. There is no formal policy regarding feedback to police departments, but attorneys are encouraged to reach out and discuss charging decisions – especially as it relates to 148 charges. BWC footage that raises officer conduct concerns is referred to the PLEI team for review.

A PowerPoint presentation was made to the County Chiefs regarding PC 148 stats, charges, and challenges.

Systemic Changes

- The DA will work to eliminate cash bail in California.
- Cash bail discriminates against low-income individuals who are disproportionately African-American or Latino. It is unfair for a wealthy but dangerous person to buy their freedom. It is unfair for a poor person who is not dangerous to be deprived of their freedom. We will no longer ask - how much money does a person have? Instead, we will ask – is this person safe to release from jail before trial? If the answer is yes, he will be released and supervised, no matter how poor. If the answer is no, this person is dangerous, he will be held in jail, no matter how rich. Eliminating cash bail will also have a powerfully positive economic impact on racial inequity because it will end the transfer of millions of dollars in bail bond fees out of poor communities of color to bail bondsmen and keep those millions of dollars in the community working for the community.

Progress: We have supported the zero cash bail schedule while also fighting for our right to seek conditions or detention on appropriate suspects.

- *We have worked extensively with the department of pre-trial services to implement a new risk assessment tool that is transparent and fair.*
- *We are working towards the goal of eliminating cash bail and only seeking detention on the most dangerous individuals where no conditions exist to adequately protect the public.*
- The DAO will stop requesting fines and fees for indigent defendants.
- Because our criminal justice system has a disproportionately high percentage of Latino and African American defendants, the fines and fees imposed at the end of a criminal case are paid more by those communities. When you also consider that the median household income for African American and Latino families is dramatically less than Asian and White families in our County, the percentage of indigent defendants who are African-American or Latino are even higher. Eliminating fines and fees for the poor of all races will have a disproportionately positive effect on communities of color.

Progress: We no longer will seek fines and fees from the indigent.

- *The protocol – of course, the DA does not actually impose fines or fees, so we have worked with the PD and the Court to establish a protocol. For indigent clients, the defense will move to strike all fines and fees as a due process violation based on indigency. They will support this with a verbal or written declaration. As a matter of policy, we will agree/not oppose this motion. We have communicated our position to the Court.*
- The DA will automatically expunge the criminal record of those who have successfully completed probation.

- Too many people experience barriers in getting a job or advancing in a career because of an old conviction for a crime that is eligible for expungement from their criminal record, but only after going through a lengthy and time-consuming court petition process. Because the criminal justice system has had more Latino and African American defendants than their representation in our community, these barriers disproportionately affect communities of color. This initiative will seek to automatically expunge convictions from the records of those who are eligible for it, without their having to make an individual court petition.

Progress: Starting with a test year of 2016, we have now identified about 14,000 cases where we will move to clear these individuals' records. Our next step is to meet with the court and then work out the digital highway to actually change the records at both the Court and the DOJ. We did this before with the cannabis record clearances. We hope to use the same method. Once we do this successfully (and we will) we will move on to every other year going back at least 30 years.

Last year, we created a unique program that automatically corrected the actual records at DOJ (as opposed to just signing an order that is sitting in a file somewhere), which cleared the cannabis convictions for about 13,000 cases.

- The DAO will stop filing thousands of VC 14601.1 (Driving on a Suspended License for Failure to Pay Fines and Fees) as misdemeanors in Criminal Court and instead file those cases in Traffic Court as infractions.
- All of our cases in criminal court have a disproportionately high percentage of Latino and African-American defendants. By removing a large number of these cases from criminal court, and moving them instead to traffic court as infractions (like speeding tickets), we reduce the overall number of cases within the criminal justice system, and by so doing have a disproportionately positive impact on communities of color.

Progress: The DAO has sent directions to all agencies informing them that all 14601.1(a) cases are to be filed as infractions and sent to Traffic Court. If an agency submits a case to the DAO charging a 14601.1(a) as a misdemeanor, the case gets sent back to the agency to amend the citation and route the case to Traffic Court. Due to the Pandemic the Traffic Court has been closed, but the backlog of cases has been referred to a commissioner sitting in the Hall of Justice. The DAO will monitor the handling of that backlog to ensure consistent disposition of 14601.1(a) cases. The DAO is also working with law enforcement agencies to help with on-going training so that officers understand when to charge a 14601.1(a) violation as an infraction.

- The DAO will increase sentencing recalls for worthy prison inmates to incentivize rehabilitation and incentivize inmates to drop out of gangs and debrief which will help decrease segregation, racism and violence in state These sentencing recalls follow from AB 2942, which the DA co-authored and supported with

Assembly Member Phil Ting and Hillary M. Blout of For The People, a criminal justice reform non-profit organization. The criteria for the recalls includes: inmates who have rehabilitated themselves, made amends to their victims, and if applicable, dropped out of gangs and debriefed.

- While this reform applies to all defendants, because of the disproportionately high numbers of Latino and African- Americans in state prison, this reform will have a disproportionately positive impact on the Latino and African- American

Progress: This has been accomplished. We received a highly detailed spreadsheet from CDCR with every SCC inmate. Rather than just wait for someone to petition us, we are now actively reviewing this list to identify potential candidates.

Our Covid-19 jail release response safely reduced our jail population by about 1/3. Our jail population is at the lowest level in decades.

The DA will no longer seek the death penalty.

- In the past, I supported the death penalty when I viewed the heinous murders through the eyes of the victims whose lives had been taken and from their families that might never find But, I also trusted that as a society we could ensure the fundamental fairness of the legal process for all people. With every exoneration, with every story of racial injustice, it becomes clearer to me that this is not the world we live in. These cases use up massive public resources and cruelly drag on for years with endless appeals that give no finality to the victims' families. There is the tragic but real risk of wrongful conviction. And shamefully our society's most drastic and devastating law enforcement punishment has been used disproportionately against defendants of color.

Progress: The DA has not pursued a new death penalty prosecution.