

BEND THE ARC REFORMS

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.
- The DAO will set up Victim Services Office Hours with Community Based Organizations.
 - 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.
- 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 inequities.

- 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.
- The DAO will set up a Worker Exploitation Task Force.
 - 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.
- 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.

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."

- 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.

- 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 attorneys. 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.
- 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.
- 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.

- 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.
- 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.
- 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.
- 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.

- 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.
- 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.
- 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.

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.
- 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.

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.
- 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.
- 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.

- 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.
- 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 prisons. 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 communities.

- 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 peace. 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.