

Office of the
MERCED COUNTY
DISTRICT ATTORNEY



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Response to ACLU report on justice in Merced County:

My campaign platform in 2018 was for change, and I have fulfilled that commitment to Merced County. My platform was also founded on tough, fair, and honest prosecutions. I believe the contents of the ACLU study show that I have delivered on that promise. In nearly every category, our office has increased its felony filings when compared to the years prior. Our focus on the most vulnerable victims, women and children, began with the designation of two dedicated prosecutors to domestic violence and two dedicated prosecutors to child victim crimes. I will never apologize for the aggressive prosecution of serious and violent crimes because that is my job. I will always advocate for victims' rights and public safety.

Nonetheless, it is essential that our office operates fairly, and I appreciate the scrutiny the ACLU brings to that aspect of our job performance. I believe the statistics outlined in this report show there is a direct correlation between the criminal activity in our county and our prosecutions. I think it is important to consider the large influence of gang violence in our communities and its tendency to lure participants based upon their ethnic and cultural similarities. This office is working to improve transparency, and, as the ACLU recognized, the fact that the statistics used in the report were available is testament to the improvements made since I took office. I am committed to continuing this effort.

Below are direct responses to the recommendations published in the ACLU report released today:

Charging Decisions

Bullet 1: The District Attorney's Office enforces the laws of the State of California. It is our duty to enforce these laws impartially. I refuse to impose my political beliefs as an overlay for policy within the Merced County District Attorney's Office. If the law is currently in effect in California; it will be enforced in Merced County -- period.

Bullet 2: Diversion in the majority of misdemeanor cases is provided for by the California legislature along with appropriate mental health diversion. However, these provisions are unsupported by State funding. Merced County resources are limited, and our county has not yet developed the programs recommended by the State. However, our justice partners are committed to finding ways to bring these programs to Merced County. Discussions with Merced County Superior Courts are in their early stages, and this is work I hope to continue.

Bullet 3 & 4: Every case is evaluated independently and filed upon based on the state of the evidence and the application of the law. This practice will not change while I am District Attorney.

Youth Justice

Bullet 1: See Charging Decisions Bullet 3 & 4.

Bullet 2: This practice is already in effect in Merced County to a certain extent. The Merced County Probation Department offers services similar to diversion in nearly all low-level offenses. Only the most serious of cases are ever sent to the District Attorney's Office for evaluation and determination for filing criminal charges.

Bullet 3: While I support developmentally appropriate alternatives to incarceration for youth and, based on scientific studies, I support similar programs for young adults below age 25 whose brains have not fully matured, I cannot commit to a blanket rule governing all juvenile offenses that prohibits adult prosecution of juveniles. Our office now and in the future enforces the will of the people of the State of California as reflected by the legislation of this State. Under California law, prosecutors no longer have discretion to directly file juvenile cases in adult court. All juvenile cases transferred to adult court must be authorized by the juvenile court judge, following an extensive transfer hearing considering all aspects of the case. Unless the law changes, this office will continue to pursue adult prosecutions of juvenile offenders in appropriate cases.

Death Penalty

Bullets 1 & 2: The death penalty continues as the law of the State of California, regardless of the declaration of Governor Newsom. My personal beliefs on this issue or any other are not for me to impose when executing my duties as District Attorney. I instructed our office to pursue the death penalty in the Santiago Martinez case which is active and pending. In addition, this office is currently evaluating whether it is appropriate for the death penalty to be sought in the case against Patricia Ortiz.

Diversion

Bullet 1: When adequate services are available in Merced County, our office will recommend diversion in appropriate cases.

Bullet 2: Our office has no jurisdiction over cases that are not filed and has no ability to ensure participation in diversion services without filing a criminal complaint. Diversion, by definition, does not require an admission of guilt.

Bullet 3 & 4: The Merced County Superior Courts and the Merced County Probation Department select and monitor the service providers for any diversion or deferred entry of judgement program. The courts also govern the assignment of fees.

Parole and Sentencing

Bullet 1: The role of the District Attorney is to consider the needs of society as a whole. If an individual continues to present a danger to society, it is the duty of this office to advocate against their release.

Remaining Bullets: Merced County is now a pilot program county for prosecutor initiated resentencing. We are currently developing criteria for successful applicants to this program. Fairness is one essential element of justice. This program ensures that as society's values change -- as is reflected in legislative changes -- people who were sentenced at an earlier time and are no longer a danger to society can still access the justice of today.

Immigration

California law currently requires that all prosecutions consider immigration status and consequences in resolving cases. District Attorney staff are instructed to follow the law in all of their cases.

Police Accountability

The District Attorney's Office currently investigates all officer involved shootings. Reports on those investigations are published on the District Attorney's web page when permitted by law. Our County actively complies with AB 1506; however to date, no qualifying circumstances triggering an investigation have occurred in our county since the law went into effect.

The Merced County District Attorney's Office is deeply committed to the safety of Merced County as a whole. It is our duty to enforce the laws of the State of California in a just and fair manner. While I am Merced County's District Attorney this is my promise to every citizen of Merced County.



Kimberly R. H. Lewis
Merced County District Attorney