

**District Attorney (DA) Policy Reform Work Group**  
**Recommendations for District Attorney Reform**  
**Policies 10-29-21**

The District Attorney (DA) is the most powerful person in the criminal justice system. The DA solely decides who to prosecute and who not to prosecute. If not prosecuted, the charges are dismissed. The DA decides if a defendant is offered diversion or not; and the DA decides what kind of charges to bring against the individual. The DA negotiates plea deals and can overcharge to get plea deals. The DA has the power to influence bail and sentencing. The DA can decide categories or types of charges that his or her office will not prosecute. And more.

In recent years, a number of DA Offices across the country have adopted and implemented reform minded policies. The article, *A Public Defender Definition of Progressive Prosecution*, defines progressive prosecution as “the model of prosecution committed to truth-telling about systemic racism, shrinking mass criminalization, addressing root causes of crime, and bringing the criminal legal system in line with basic notions of justice and humanity.” See full article at <https://law.stanford.edu/publications/a-public-defender-definition-of-progressive-prosecution/>.

A DA Policy Reform Work Group, comprised of representatives from the Chapel Hill – Carrboro NAACP, Orange County Bail/Bond Justice, Orange County Justice United, and Progressive Democrats of Orange County, has worked since June 2021 to identify and recommend high priority policy reforms for our local NC District 18 Orange-Chatham DA Office (hereafter referred to as the Orange-Chatham DA Office). We researched the specific policies implemented by reform-minded DA Offices across the country, including the neighboring City of Durham, NC. We also asked a number of people, with different perspectives, their high-priority recommendations for Orange-Chatham DA Office policy reform. We received advice from local justice-impacted individuals, Orange County public defenders, Orange County Bail/Bond Justice’s Court Observation Team members, leaders in criminal justice reform, and other social justice organizations in our community.

We urge the Orange-Chatham DA Office to implement policies that reduce incarceration and increase fairness, compassion, and transparency. To do this, we ask the DA to deflect most minor charges from the court system and divert as many cases as possible that arrive in court to other appropriate services. For more serious charges, we urge the DA to end the practice of excessively long, punitive plea bargain sentences that lead to mass incarceration and the warehousing of individuals.

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Toward these ends, we will be asking candidates for the Orange-Chatham DA in the spring 2022 elections to commit to implement a slate of reform-minded policies. We recommend the following 12 high-priority policy reforms.

**1. Be Transparent.** Be transparent about policies guiding pleas, sentencing choices, and diversion programs. Provide annual reports assessing the Office's efforts to ameliorate racial bias in sentencing. Work with the UNC School of Law's Prosecutors and Politics Project, UNC's Criminal Justice Innovation Lab, and/or the Duke Wilson Center for Science and Justice to form a publicly available policy on transparency and to track disparities. Seek funds needed from the Counties and other agencies to do this critical work.

**2. Make Diversion the Rule.** Encourage Police Departments and the Sheriff's Offices to use pre-arrest diversion to deflect most minor charges from the court system and divert most that arrive at the court system to other appropriate services. Encourage diversion when mental health or substance use issues are involved and help ensure these diversion programs are adequately funded. When diversion is not an option, as often as possible, create a First Offender Deferred Prosecution Agreement or a Conditional Discharge to dismiss the case.

**3. End Wealth-Based Pretrial Detention.** Consider pretrial detention only when the facts are evident and clear, and convincing evidence shows a substantial likelihood that the defendant's release would result in great bodily harm to others or the defendant's flight. Do not request cash bail except for violent misdemeanor or violent felony offenses where there is substantial risk of great bodily harm to an individual or the community. When cash bail is requested under these limited, high-risk circumstances, align cash bail amounts with the accused's ability to pay. Immediately review cases of individuals held in jail pretrial. Ensure that individuals who remain detained have their cases reviewed and addressed as soon as possible for possible bond reduction and resolution.

**4. Support Alternatives to Incarceration for Probation Violation Cases.** Recommend treatment in lieu of incarceration where probationers have behavioral or mental health issues. For all defendants, work with the Probation Department to encourage alternative dispositions and to support early termination when an individual has substantially complied with conditions.

**5. Decline to Prosecute Drug Possession for Personal Use.** Do not prosecute drug charges for personal use amounts of any kind of drugs. Do not prosecute drug paraphernalia charges.

**6. Consider Consequences on Immigrant Status, Jobs, and Housing.** Consider and minimize the collateral consequences of bond requirements, plea offers, sentencing, and conviction on the individual's immigration, employment, and housing status.

**7. Create a Fair Firearm Policy.** Do not automatically prosecute possession of a firearm by a felon. Look at the circumstances surrounding charging including proximal violent conduct and the individual's last

felony conviction (if no violence is alleged or the underlying felony conviction is over 10 years old, use a lesser charge). Regardless, the individual's firearm will be confiscated.

**8. Create Fair, Predictable Charging and Plea Bargaining Practices.** Seek indictments based on what is the appropriate resolution of the case and not the highest possible charge. There should always be a benefit for pleading guilty and accepting responsibility; however, the reward should be modest so that guilty pleas are not coerced. To the extent possible, minimize disparity between the charged offense and the plea offer, thus serving justice for both the victim and the defendant. Put in writing and make public all policies regarding indictment and plea offers.

**9. Reduce Excessive Court Fines, Fees, and Costs.** Consider ability to pay in all cases, including traffic cases, deferred prosecutions, diversions, and misdemeanor and felony pleas and sentencing.

**10. Create a Sentencing Review Committee.** Review cases of individuals incarcerated on prison sentences prosecuted by the Office to determine if sentencing relief is appropriate and would enhance equity and justice.

**11. Use Restorative Justice Principles.** Continue to use restorative justice principles to resolve cases in District and Juvenile Court. Study and seriously consider incorporating restorative justice principles for serious felony cases, including previously disposed cases, where defendants are serving lengthy prison sentences.

**12. Actively Recruit Reform-Minded DA's and DA's of Color.** Recruit reform-minded DA's and DA's of color who support these policy reforms. Require racial equity training for all Assistant DA's.

We also ask that each candidate pledge to continue the reform-minded policy adopted by Orange Chatham DA, Jim Woodall: Drivers stopped whose only offense is driving without a license will not be prosecuted; instead, they will be required to attend a diversion program for drivers.