

# Recommendations from the City of Alameda's Subcommittee on Laws that Criminalize Survival

February 2021

## Introduction

In this document, the Subcommittee on Laws that Criminalize Survival provides an introduction of “criminalized” issues in the city of Alameda that create unnecessary burdens for residents, law enforcement, and surrounding communities at large in Alameda. We then provide a list of preliminary recommendations for APD and city leadership on how to address these issues. Ultimately, we hope that by building coalitions of support across residents and policy bodies and committing to larger goals of liberation, we can build towards a community where everyone truly “belongs.”

## Overview on Criminalization of Survival

### A. Homelessness

In Alameda, unhoused populations often find themselves involved with members of the Alameda Police Department (APD). We recognize that it is the policy of APD to provide law enforcement services to all members of the community. However, we would like to explore options that de-center police interactions with Alameda's unhoused populations through, and ultimately hope to provide information for residents promoting non-police options and up-to-date information about resources available for unhoused populations.

The City of Alameda currently maintains a webpage with preliminary resources that we hope to expand upon. How can we ensure that information on the website is kept up to date? Furthermore, how can we explore alternate forms of communication (snail mail, social media) to ensure that we reach a wide audience? Current information is more necessary than ever to ensure that our community members turn towards social services rather than retaliatory or vindictive manners in dealing with these issues.

### B. Fines, Fees, and Revenue Generation

The American criminal justice system has developed an increased reliance on the usage of monetary sanctions (fines, fees, restitution, cash bail, traffic ordinances, and others). This has disproportionately affected indigent communities and people of color, who find themselves stuck in “cycles of poverty and punishment”<sup>1</sup>. Locally, Alameda police enforce traffic and vehicle citations in a way that disproportionately target BIPOC and low-income individuals.

As a whole, the state of California has been on the cutting edge of policy reform around the issues of fines and fees. In 2016, the city of San Francisco became the first in the nation to launch the Financial Justice Project, a government-based program to assess and reform the levying of fines and fees throughout the county. The project has served as a model for cities across California, and we look to the goals of the Financial Justice Project as a template for

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<sup>1</sup> <https://finesandfeesjusticecenter.org/about-fines-fees-justice-center/>

which the city of Alameda can base its reforms upon. The passage of AB 1869 in September 2020 (which eliminated a multitude of administrative fines and fees imposed in the California justice system) also signifies that Californians are growing increasingly concerned about the entanglement between poverty, debt, and the criminal justice system. As the state legislature found, “Because these fees are often assigned to people who simply cannot afford to pay them, they make poor people, their families, and their communities poorer.” (AB 1869, Sec. 1(g)).<sup>2</sup>

We hope to use our time in this committee to continue this momentum towards progress by exploring possibilities that the City of Alameda can take. We envision, for one, the creation of a Fines and Fees task force with the city, composed of community members, members of law enforcement, and legislative body members. We also hope to further explore the possibility of reforms that allow low-income individuals to pay off traffic fines and citations and to encourage the City to evaluate the effects of private parking, tow, and traffic fines and fees on BIPOC/low-income residents of Alameda.<sup>3</sup> Ultimately, we seek to “alleviate the administrative burden for government entities and for courts,” thereby easing financial and social burdens for all.<sup>4</sup>

### C. Misdemeanors/Low-Level Crimes

The State of California is a decade into wide-reaching criminal justice reform, having pursued legislation that seeks to recognize issues of mental illness, substance abuse, and poverty that disparately affect populations of color.<sup>5</sup> The City of Alameda, however, continues to arrest and prosecute for these low-level crimes associated with poverty, mental illness, and substance abuse. We believe that the City’s policing and prosecuting activities should mirror this movement, addressing status-related offenses with services and treatment rather than arrest and prosecution.<sup>6</sup> Addressing offenses like trespassing, intoxication in public, and simple possession through prosecutorial ways is antithetical to the contemporary societal recognition that services, not incarceration, are the solutions in resolving these issues.

In these respects, we support the recommendations of the Unbundling Subcommittee. We further recommend that the City forego any increased funding to, and freeze hiring within, the City Attorney’s prosecutorial unit until the work of the Police Reform committees is complete.

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<sup>2</sup> [https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201920200AB1869](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200AB1869)

<sup>3</sup>

<https://www.google.com/url?q=https://m.eastbayexpress.com/oakland/towing-for-dollars-in-alameda/Content?oid%3D22699785%26showFullText%3Dtrue&sa=D&ust=1610910572723000&usg=AOvVaw3EJSe9F0NO4IarXXZ89P5S>

<sup>4</sup> <https://www.brennancenter.org/our-work/research-reports/steep-costs-criminal-justice-fees-and-fines>

<sup>5</sup> See e.g. The Criminal Justice Realignment Act of 2011 (low-level offenders kept in local custody instead of state prison), Proposition 47 (reduction of low-level theft and drug felonies to misdemeanors), Proposition 36 (Three Strikes Law reform), Proposition 57 (earlier parole consideration and judges (not D.A.’s) deciding which minors should be tried in adult court), and The Racial Justice Act of 2020..

<sup>6</sup> In 2019, the City Council voted to fund a position in the City Attorney’s Office to prosecute crimes. While the intent may have been to prosecute city code violations or more serious offenses the District Attorney chose not to prosecute, the prosecutor’s docket includes trespass (Pen. Code sec 602(m)), intoxication in public (section 647(f)), simple possession of narcotics (Health & Saf. Code sections 11350 & 11377), vandalism (Pen. Code sec. 594), rather than offense uniquely in the city’s purview, e.g. violations of city ordinances regarding tenant harassment, consumer protection, etc.

#### D. Laws that Criminalize Youth

Minors who commit a crime are considered “delinquent.” Minors who otherwise violate established rules and statutes (status offenses) are identified as “incorrigible minors.” Status offenses include curfew violations, truancy, running away, being beyond control of parents or disobedient to lawful parent rules.<sup>7</sup> Law enforcement agencies can counsel and release the juvenile, refer an arrested juvenile to a probation department, or turn the juvenile over to another agency. This committee wishes to reprioritize funding that was previously dedicated towards SROs to enhance counseling and citywide/countywide support services for students and families. We also hope to continue to minimize the relationship between APD and school operations, particularly in cases relating to delinquency or punishment, and to support the district’s measures to follow models of restorative justice to engage youth.

#### E. Mental Health

Research shows that mental health issues are often confounded with criminal behavior. Recent DOJ reports note that IMIs (individuals with mental illnesses) represent **40%** of incarcerated individuals. Moreover, over **90%** had a history of multiple arrests. IMI are **twice as likely** to recidivate vs. non-IMI<sup>8</sup>. The data also shows that “the risk of being killed during a police incident” is **16 times** greater for people with untreated mental illness<sup>9</sup>.

We hope to further investigate the percentage of IMI encounters with APD and how initial determinations of mental health are made. Historically, communities have relied on the criminal justice system and law enforcement to provide mental health care. As a result, every year over 2 million people with mental illness are booked into America’s jails and prisons (NAMI, 2019).

Furthermore, we hope to further explore the following questions in further conversations with APD and City/County officials:

- How does APD fit in the ecosystem of mental health? Moreover, how do APD and the City of Alameda coordinate with county-level social, mental, and health care services?
- In 2015, Governor Brown signed Senate Bill 11 which mandates POST to create, maintain, and make available a three-hour mental health course. How is this implemented for APD? Is this the extent of mental health training provided?
- What practices and procedures are in place to help identify those suffering from mental illnesses?

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<sup>7</sup> [CA Welfare & Institutions Code Section 601](#)

<sup>8</sup> For more detailed findings, see final report to DOJ for award #2015-MO-BX-0222 (McCline, Meehan & Brown, 2017)

<sup>9</sup> 2015 study, “[Overlooked in the Undercounted: The Role of Mental Illness in Fatal Law Enforcement Encounters.](#)” by the Treatment Advocacy Center.

- What budgetary implications flow from a more engaged presence of mental health professionals at the initial encounter of IMI with APD?
- How can Alameda learn from mental health pilot response programs (e.g. Oakland, San Francisco, Denver) and implement similar processes in its own police force?
- What such practices have been incorporated into APD policies that tend to minimize how we “criminalize” the behavior of IMI, a significant segment of our more vulnerable individuals?
- Can we estimate the extent to which incorporation of evidence-based practices relative to IMI might enhance APD effectiveness with this population subgroup?

### **Sub-Committee Recommendation Summary**

The following recommendations are preliminary frameworks that we hope to expand upon in detail and scope with APD and city leadership.

1. Conduct a “Did You Know” social media campaign using Instagram, Facebook, and Twitter to direct folks away from emergency police reporting.
  - A. Campaign will mobilize a “What To Do If ...” strategy to connect engaged viewers with city and county services for issues on unhoused populations, animal control, and other non-emergency referrals.
2. Extend operations of “Block by Block” Campaign past January 2021.
3. Create a task force through the City that conducts further analysis of fines and fee revenue to determine their extent and effects on poor people of color.
  - A. The City should consider how repeated usages of punitive fines and fees affect low-income residents.
4. Expand the city of Alameda’s OpenGov online reporting of crimes to include additional categories outside categories required by the FBI’s UCR (Universal Crime Reporting) and NIBRS (National Incident Based Reporting System).
  - A. The department should release data that codes and specifies youth interactions without compromising the confidentiality of minors.
  - B. The “all other” category for reported Part II crimes should be specified.
  - C. Daily reports should be archived alongside yearly numerical reports. Citizens should be able to delineate data that spans periods of days, weeks, and months.
  - D. The department should track and publicize data on police stops and use of officer force.

5. Continue the current campaign to partner with Compstat for Justice, the Center for Policing Equity, and other outside nonprofits for additional recommendations and reports on clarity, transparency, and equity.

A. Collaborate with Oversight Committee, civilian committees, policy organizations, the APD IT department and other advocacy organizations in this engagement.

B. The department should be transparent about their process of communication with the Center for Policing Equity and seek to release all reports and analysis conducted by the Center.

6. Report requests for public information in a timely fashion (10 business days).

A. Continue to improve data collection and transparency without compromising resident integrity, privacy, and increasing the department's reach in the usage of unnecessary criminological surveillance.