

OPEN LETTER FROM STATE AND LOCAL PROSECUTORS May 2017

On May 10, 2017, Attorney General Sessions announced a new charging and sentencing policy for the United States Department of Justice that requires federal prosecutors in all cases (absent high level approval) to “charge and pursue the most serious, readily provable offense” -- defined as those offenses that “carry the most substantial guidelines sentence, including mandatory minimum sentences.” Any prior inconsistent policy of the Department of Justice relating to these matters was rescinded.

The Attorney General’s directive marks an unnecessary and unfortunate return to past “tough on crime” practices that we now know simply don’t enhance or promote the safety of our communities. There is no empirical evidence to suggest that increases in sentences, particularly for low-level offenses, decrease the crime rate. Instead, we know that in many instances contact with the justice system exacerbates the likelihood of future criminal conduct and that the deterrent effect of long-term prison sentences is questionable at best. Moreover, it is important to note that national crime rates remain near all-time lows -- down over 50% from their peak in 1991, to levels the country has not experienced since 1970.

Although there are no certain benefits to the newly announced policy, there are definitive and significant *costs*. The increased use of mandatory minimum sentences will necessarily expand the federal prison population and inflate federal spending on incarceration. There is a human cost as well. Instead of providing people who commit low-level drug offenses or who are struggling with mental illness with treatment, support and rehabilitation programs, the policy will subject them to decades of incarceration. In essence, the Attorney General has reinvigorated the failed “war on drugs,” which is why groups ranging from the American Civil Liberties Union to the Cato Institute to Right on Crime have all criticized the newly announced policy.

As current and former elected state and local prosecutors, we are committed to prioritizing the safety, fair treatment and dignity of all members of our community. This is why we have grave concerns with the tenets embodied in the Attorney General’s directive. And it is why we agree with national law enforcement leaders who have opined that we “need not use arrest, conviction, and prison as the default response for every broken law.” *See A Crime and Justice Agenda for the New Administration*, Law Enforcement Leaders To Reduce Crime and Incarceration (February 13, 2017), available at <http://lawenforcementleaders.org/fighting-crime-strengthening-criminal-justice-agenda-new-administration/>.

We will continue in our own jurisdictions to undertake innovative approaches that promote public safety and fairness, and that ensure that law enforcement’s finite resources are directed to the arrest and prosecution of the most serious offenders. It is through these priorities that

prosecutors can best advance public safety and fortify trust in the legitimacy of our criminal justice system.

Respectfully,

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