

The Path of Criminal Justice under the Trump Administration¹

(David Jaros)

It is not easy to assess the impact that a Trump Presidency will have on criminal justice policy. This is for a few reasons. First, in a campaign that was marked by a dearth of detailed policy proposals, the President-Elect was particularly reticent when it came to specific criminal justice reforms. (Even Mr. Trump's most well-known proposal to build a wall on the southern border was short on details and recent reports suggest that the proposal will not, in fact, be funded by the Mexican government.) Second, the vast majority of criminal justice policy is formulated and implemented at the state and local level. In essence, while the President-Elect's tweets make headlines, states and local governments make a lot of policy. Third, a coalition of left and right wing leaders have made significant progress in the last few years championing "smart" criminal justice reforms aimed at saving money, reducing incarceration, and improving public safety. While there has been progress on issues like bail reform, mandatory minimums, and support for treatment programs over extended incarceration, it is unclear how much momentum this movement has in the face of the President-Elect's increased "law and order" rhetoric. Moreover, while the majority of changes occurred at the local level, many of them were supported by federal grants that may be less forthcoming under the new administration.

There are some ways that a Trump presidency and a Senator Sessions' Department of Justice will directly impact criminal justice policy. In the wake of the shooting deaths of Michael Brown in Ferguson and Laquan McDonald in Chicago, and the fatal injury of Freddie Gray in a Baltimore police van, the DOJ under President Obama has made reforming police departments a central focus of its civil rights work. The DOJ has negotiated a series of consent decrees requiring that a number of large police departments institute reforms and submit to federal oversight. Senator Sessions, the President-Elect's nominee to head the DOJ, has openly criticized these efforts, arguing that such decrees tarnish good police officers, waste taxpayer money, and constitute inappropriate interference with local government. Not only is it questionable whether the DOJ under President Trump will investigate the police and pursue consent decrees to force departments to reform, it is equally unclear whether Senator Sessions will seek to enforce the consent decrees that the Obama administration has already negotiated.

There are other ways that criminal justice policy under the Trump Administration may differ from the Obama presidency. President Obama instituted several policies that have limited scope but which served as an example for state reformers to follow. For example, President Obama signed a "Ban the Box" memorandum that prohibited federal agencies from asking whether applicants for government jobs have a criminal record during the early stages of the hiring process. President Obama also directed the Federal Bureau of Prisons to phase out its use of private prisons which hold thousands of federal prisoners (many of whom are immigration detainees). President Trump may well repeal these policies. (Mr. Trump spoke positively about private prisons in a town hall meeting during the campaign and the

¹ I have read a significant number of news articles, editorials, tweets, and blogs since the election that explore these issues. While I can't cite my sources, I want to stress that much of what I describe has been gleaned from the reporting I have read. A blog is not an academic article, but I take plagiarism concerns to heart. While I am not sure exactly who to credit, I want to be clear that I relied heavily on others to develop my thoughts on this issue.

Wall Street Journal reported that the stock price of the largest private prison companies surged after Mr. Trump won the election.)

The Department of Justice also dispenses millions of dollars in federal grants every year. These programs range from funding for police training and equipment to youth violence prevention and prisoner reentry programs. It appears likely that President Trump will shift the DOJ's funding priorities. (There is some precedent for this-- under the Bush administration, millions of dollars earmarked for DOJ grants to support wrongful conviction representation were never distributed.) President Obama also banned the sale of military equipment to local police departments. The National Fraternal Order of Police has urged the President-Elect to reverse this policy and allow the Department of Defense to sell military surplus equipment, which includes grenade launchers and mine-resistant armored vehicles (MRAPs) to local law enforcement agencies.

Finally, President Trump's greatest influence on criminal justice may be the indirect impact of the rhetoric and values Mr. Trump espouses. Mr. Trump has over 20 million twitter followers and he is about to assume a position that is the greatest soap box in the world. His vocal support for policies such as "stop and frisk" and the use of racial profiling to identify likely criminal suspects may well shape the strategies that local law enforcement officials choose to adopt. Ultimately, Mr. Trump's impact on criminal justice will be determined largely by what the public chooses to believe and the policies that local governments and communities choose to adopt.