



The Commonwealth of Massachusetts
Executive Office of Public Safety and Security

One Ashburton Place, Room 2133
Boston, Massachusetts 02108

Tel: (617) 727-7775
TTY Tel: (617) 727-6618
Fax: (617) 727-4764
www.mass.gov/eopss

CHARLES D. BAKER
Governor

KARYN E. POLITO
Lt. Governor

THOMAS A. TURCO, III
Secretary

April 4, 2019

Suffolk County District Attorney
1 Bulfinch Place
Boston, MA 02114

Dear District Attorney Rollins:

I write to express my concern with a number of new policies announced for the Suffolk County District Attorney's Office in The Rachael Rollins Policy Memo issued last week. Several of the policies announced in the Memo would, if implemented as proposed, put at risk the Commonwealth's ongoing efforts to combat the ongoing crisis of the opioid epidemic and substantially restrict government's ability to protect victims threatened with serious crimes.

There is broad agreement across the Commonwealth with the view expressed in the Policy Memo that the criminal justice system is ill equipped to solve social problems. Mental illness, substance abuse, and economic disadvantage are problems for government to solve—not grounds to support criminal prosecution. This was a central principle behind many of the reforms included in the criminal justice reform bill that the Governor signed into law 12 months ago.

I am concerned, however, that a number of your Office's newly announced policies do not reflect the careful balance struck in the criminal justice reform bill between reducing unintended long-term consequences of involvement in the criminal justice system and government's continuing responsibility to ensure public safety. I note in particular the following specific policies, which seem to dismiss categorically the legitimate public safety concerns that individual cases will surely present in Suffolk County, where over a million people live and work each day:


- A rule presumptively limiting a review of a defendant's criminal history to 36 months, which will mean that some of the offenders with the worst criminal histories will regularly be treated as first-time offenders. A person who commits a serious crime, receives a lengthy state prison sentence, is released, and then promptly commits a new crime is unlikely to have any criminal history during the previous 36 months, most of which will have been spent behind bars.
- A rule declining to prosecute dealers of heroin, fentanyl and other illegal drugs who are charged with possession with intent to distribute, so long as the amount the defendant is caught with on a particular occasion is below a threshold representing hundreds of dollars of heroin or fentanyl. While ensuring that there is sufficient evidence to prove an intent to distribute beyond a reasonable doubt is an appropriate consideration for a prosecutor, once police have gathered that evidence, a drug dealer should

not be relieved of criminal liability simply because the police made an arrest before a sale is fully consummated. The rule you have proposed would require the police to wait until these dangerous substances are actually distributed, often to individuals with substance use disorders, before they could be assured that sellers of drugs would face criminal prosecution. I am particularly concerned that this policy will interfere with state-wide efforts to disrupt drug distribution networks that continue to bring deadly opioids into the Commonwealth.

- A rule declining to prosecute possession of 20, 30 or even 40 pounds of marijuana as a crime of possession with intent to distribute under any circumstances, even as the Commonwealth seeks to eliminate black market sales of marijuana in favor of supporting a safe and transparent regulated market.
- A rule strongly discouraging requests to the court for conditions of pre-trial release such as stay-away orders, GPS monitoring, and substance abuse testing, even when intended to protect victims of violent crime and domestic violence, and a corresponding directive to minimize reliance on pre-trial detention based on dangerousness even in the narrow circumstances now permitted by law. The directive not to seek stay-away orders or electronic monitoring for people who commit dangerous offenses unless there is a threat to a specific person or property would preclude persons charged with crimes against children from being ordered to stay away from children or playgrounds and gang members armed with unlawful weapons from being ordered to stay away from their associates or their rivals' territory.
- A rule effectively declining to prosecute trespass, shoplifting, receiving stolen property, and larceny, despite the fact that these are crimes that often victimize—over and over again—shopkeepers and business owners struggling to build prosperity in economically challenged neighborhoods.
- A rule declining to prosecute cases in which a person is operating with a motor vehicle license that has been administratively suspended because of a refusal to take a breath test during a previous drunk driving arrest, which will undermine our drunk driving laws and make our roads more dangerous.

I appreciate your efforts to think differently about criminal justice, accountability, and public safety. Your Policy Memo highlights a number of principles that should always inform administration of the criminal laws: a consideration of collateral consequences, a commitment to equity in application of the laws, and a willingness to exercise discretion where alternatives to prosecution can adequately protect public safety. I urge you, however, to review the concerns I have outlined above and to consider appropriate revisions to the memorandum.

Sincerely,



Thomas A. Turco III
Secretary

cc: Attorney General Maura Healey
Massachusetts District Attorneys Association
Chief Justice Paula Carey
Chief Justice Roberto Ronquillo
Chief Justice Paul Dawley