

Foreword

*Sheldon Whitehouse**

In “Beyond the War on Drugs,” the *Harvard Law & Policy Review* has selected a timely and important topic—particularly in light of the recent presidential election, whose winner ran a campaign heavily focused on “restoring” law and order. Forty-five years after President Richard Nixon declared a war on drugs and identified drug use as “public enemy number one,” the policies and priorities associated with that war stand at a crossroads.¹

As a U.S. Senator from Rhode Island currently serving as Ranking Member of the Judiciary Subcommittee on Crime and Terrorism and the former U.S. Attorney and Attorney General for my state, I have witnessed firsthand the opportunities lost with approaches focused too narrowly on incarceration as a solution to our nation’s drug crises.

For the last three decades, no single factor has affected our criminal justice system more profoundly than our policy with respect to illegal drugs. From increased reliance on mandatory minimum sentences at the state and federal levels to a prioritization of law enforcement over prevention and treatment, a series of policy choices since the 1970s have led to a fivefold explosion in the nation’s prison population.²

There was a time, in not too distant memory, that being tough on crime—including drug-related crime—served as a major “wedge issue” between Republicans and Democrats.³ The 1988 presidential campaign famously centered around crime, featuring race-baiting ads attacking the

* Sheldon Whitehouse served as Rhode Island’s United States Attorney and Attorney General of Rhode Island before being elected to the United States Senate in 2006, where he is a member of the Judiciary Committee and the ranking Democrat on the Judiciary Subcommittee on Crime and Terrorism.

Senator Whitehouse has worked to strengthen American cybersecurity capabilities, improve resources to fight drug abuse and treat addiction, and reverse the rise in prison costs and populations. He is a leading advocate for protecting access to justice, including the Seventh Amendment right to a civil jury. In response to a series of judgments favoring powerful corporate interests, Senator Whitehouse has warned of the dangers of ideologically oriented judicial activism.

In addition to the Judiciary Committee, he is a member of the Budget Committee; the Environment and Public Works Committee; the Health, Education, Labor, and Pensions Committee; and the Special Committee on Aging.

He and his wife Sandra, a marine biologist and environmental advocate, live in Newport, Rhode Island. They have two children.

¹ President Richard M. Nixon, Remarks About an Intensified Program for Drug Abuse Prevention and Control (June 17, 1971), AM. PRESIDENCY PROJECT, <http://www.presidency.ucsb.edu/ws/?pid=3047> [https://perma.cc/8ZW4-FXFH].

² See E. ANN. CARSON & ELIZABETH ANDERSON, U.S. DEP’T OF JUSTICE, BUREAU OF JUSTICE STATISTICS, PRISONERS IN 2015 3 (2016).

³ Janie Boschma, *This May Be the Year Crime Finally Stops Being a Wedge Issue*, ATLANTIC (Mar. 30, 2015), <https://www.theatlantic.com/politics/archive/2015/03/this-may-be-the-year-crime-finally-stops-being-a-wedge-issue/431913/> [https://perma.cc/MZ3F-GXHG].

Democratic candidate, Massachusetts Governor Michael Dukakis, for being too “soft” on the issue.⁴ There was also an unfortunate time, in not too distant memory, when American society treated addiction largely as a moral failure, best deterred by lengthy prison sentences. Despite the American Medical Association’s acknowledgment in 1987 that alcohol and drug dependency are diseases,⁵ public discourse and policy prescriptions through the late twentieth century continued to emphasize incapacitation over rehabilitation. While a series of statutes in the late 1990s and early 2000s signaled a more holistic approach to addiction, it took the current opioid epidemic to change people’s hearts and minds more broadly—its demographic reach and sheer scale likely the cause.

Today, Republican-led states from Nebraska to South Carolina to Texas are passing, and assessing the early results of, reforms aimed at reducing prison populations, easing re-entry, and limiting the most draconian sentencing laws. While these conservative efforts may have stemmed from a desire to curb exploding prison costs,⁶ early successes have strengthened their architects’ resolve. The 2016 Republican National Committee Platform “applaud[ed] the Republican Governors and legislators who have been implementing criminal justice reforms”⁷ and characterized the 2012 platform as one that “emphasized restorative justice to make the victim whole and put the offender on the right path.”⁸ Delegate Giovanni Cicione of Rhode Island proposed at one of the hearings held to create the 2016 platform that the platform urge lawmakers to “fairly assess the social and economic costs of the failure of drug prohibition, and recognize that our states are sending a clear signal that a new approach is long overdue.”⁹

These shifts, which will be examined more closely below, are not only welcome, but—according to the most recent evidence—are also more likely to succeed in loosening the grip of drugs on people’s lives. It will be incumbent on policymakers to stick to that evidence over the next several years, and to resist calls from the new White House and elsewhere to go backwards in the name of “public safety.”

⁴ Opinion, *George Bush & Willie Horton*, N.Y. TIMES (Nov. 4, 1988), <http://www.nytimes.com/1988/11/04/opinion/george-bush-and-willie-horton.html> [<https://perma.cc/RWW6-C7E8>].

⁵ Daniel H. Angres & Kathy Bettinardi-Angres, *Understanding the Disease of Addiction*, 1 J. NURSING REG., no. 2, July 2010, at 31.

⁶ See Lauren-Brooke Eisen, *A Mixed Bag on Crime*, U.S. NEWS & WORLD REP. (July 19, 2016), <http://www.usnews.com/opinion/articles/2016-07-19/republican-platform-shows-some-positive-change-on-criminal-justice-reform> [<https://perma.cc/S9MN-QWS8>] (noting that conservative policy may have changed because “failed policies . . . cost taxpayers upwards of \$80 billion a year”).

⁷ COMM. ON ARRANGEMENTS FOR THE 2016 REPUBLICAN NAT’L CONVENTION, REPUBLICAN PLATFORM 39 (2016), https://www.scribd.com/document/318660213/RNC-Platform#from_embed [<https://perma.cc/2EFW-FEQE>].

⁸ *Id.* at 40.

⁹ Maurice Chammah, *Two Parties, Two Platforms on Criminal Justice*, MARSHALL PROJECT (July 18, 2016), <https://www.themarshallproject.org/2016/07/18/two-parties-two-platforms-on-criminal-justice#.CQ5Ao9BDx> [<https://perma.cc/9WTA-Y8MA>].

This Foreword will begin with a historical look at the war on drugs—its origins, its stated and unstated objectives, and its repercussions. It will then assess whether and how recent developments in our national drug control policy indicate a change in direction. The third part will summarize the collection of articles in this volume, and the conclusion will urge the new Administration to check instincts to revert to some of the hardline tactics—such as increased prosecutions and enhanced use of mandatory minimum sentences—that have failed to address drug addiction as a public health challenge.

I. THE WAR ON DRUGS

In a now famous 1971 speech, President Nixon declared a war on drugs, telling Congress that drug addiction had “assumed the dimensions of a national emergency” and requesting eighty-four million dollars from Capitol Hill for “emergency measures.”¹⁰ According to the president, drug abuse was “public enemy number one.”¹¹

President Nixon’s declaration, like the enactment of the Controlled Substances Act in 1970,¹² was a predictable product of the 1968 election—in which Nixon ran on a platform that emphasized restoring law and order.¹³ Nixon and other political leaders used their bully pulpits to further the perception that increased drug use was to blame for widespread protest and domestic unrest.¹⁴ The Nixon administration, and large swaths of America, saw drug users primarily as criminals who required punishment rather than treatment.¹⁵

President Ronald Reagan re-declared war on drugs in 1982 and established the Office of National Drug Control Policy (ONDCP) six years later to oversee federal efforts to combat drug use and distribution. Between 1980 and 1993, state incarceration rates increased 148 percent, with arrests for drug offenses prompting most of the growth.¹⁶ The rate of incarceration swelled rapidly despite the fact that incarceration imposed significantly

¹⁰ Ed Vulliamy, *Nixon’s “War on Drugs” Began 40 Years Ago, and the Battle Is Still Raging*, GUARDIAN (July 23, 2011, 7:07 PM), <https://www.theguardian.com/society/2011/jul/24/war-on-drugs-40-years> [<https://perma.cc/W64Z-US3V>].

¹¹ *Id.*

¹² Comprehensive Drug Abuse Prevention and Control Act of 1970 (Controlled Substances Act), Pub. L. No. 91-513, 84 Stat. 1236 (codified as amended at 21 U.S.C. §§ 801–971 (2012)).

¹³ See Michael Finnegan, *Trump Echoes Nixon 1968 on Law and Order, a Risky Bet in a More Racially Diverse Nation*, L.A. TIMES (July 21, 2016), <http://www.latimes.com/politics/la-na-pol-trump-nixon-race-20160721-snap-story.html> [<https://perma.cc/E6BY-N6G3>].

¹⁴ See Emily Dufton, *The War on Drugs: How President Nixon Tied Addiction to Crime*, ATLANTIC (Mar. 26, 2012), <https://www.theatlantic.com/health/archive/2012/03/the-war-on-drugs-how-president-nixon-tied-addiction-to-crime/254319/> [<https://perma.cc/S9J3-7YZP>].

¹⁵ See *id.*

¹⁶ Heather Schoenfeld, *The War on Drugs, the Politics of Crime, and Mass Incarceration in the United States*, 15 J. GENDER RACE & JUST. 315, 322–23 (2012).

higher costs on the taxpayer than drug treatment and prevention would have.¹⁷

By the mid-1980s, Democrats were eager to shed the “soft on crime” label. Many supported the Anti-Drug Abuse Act of 1986,¹⁸ which established mandatory minimum sentences for drug possession, distribution, and production and gave rise to the notorious 100:1 disparity between crack cocaine and powder cocaine sentences.¹⁹ Congress pushed the bill through with no hearings and without consulting the Department of Justice, the Drug Enforcement Agency, the Bureau of Prisons, or the Judicial Conference.²⁰ Two years later, Congress exacerbated these sentencing disparities when it passed the Anti-Drug Abuse Act of 1988, which eliminated mandatory minimum sentences for first-time simple possession offenses except simple possession of crack cocaine.²¹ From the beginning, the disparities in treatment between crack and powder cocaine led to gross racial disparities in sentencing. In its 1995 Special Report to Congress, the United States Sentencing Commission noted that “[f]ederal sentencing data leads to the inescapable conclusion that Blacks comprise the largest percentage of those affected by the penalties associated with crack cocaine.”²²

President Bill Clinton came to power in 1992 as a centrist Democrat. Two years later, he signed the Violent Crime Control and Law Enforcement Act,²³ better known as the federal three-strike law, which passed Congress with widespread bipartisan support and mandated life sentences for defendants (including some who had not committed a crime of violence) convicted of their third felonies.²⁴ Twenty-five states, including California, Georgia, Virginia, Massachusetts, and Pennsylvania, enacted local three-strike laws between 1993 and 2012.²⁵

¹⁷ See DOUG McVAY ET AL., JUSTICE POLICY INST., TREATMENT OR INCARCERATION? NATIONAL AND STATE FINDINGS ON THE EFFICACY AND COST SAVINGS OF DRUG TREATMENT VERSUS IMPRISONMENT 7 (2004); LANE KOENIG ET AL., NAT’L EVALUATION DATA SERVS., THE COSTS AND BENEFITS OF SUBSTANCE ABUSE TREATMENT: FINDINGS FROM THE NATIONAL TREATMENT IMPROVEMENT EVALUATION STUDY (NTIES) 23–27 (1999).

¹⁸ Anti-Drug Abuse Act of 1986, Pub. L. 99-570, 100 Stat. 3207 (codified as amended at 21 U.S.C. §§ 801–971 (2012)).

¹⁹ § 1002, 100 Stat. at 3207-2 (repealed by the Fair Sentencing Act of 2010).

²⁰ See Arit John, *A Timeline of the Rise and Fall of Tough on Crime Drug Sentencing*, ATLANTIC (Apr. 22, 2014), <https://www.theatlantic.com/politics/archive/2014/04/a-timeline-of-the-rise-and-fall-of-tough-on-crime-drug-sentencing/360983/> [https://perma.cc/K45C-V259].

²¹ Anti-Drug Abuse Act of 1988, Pub. L. No. 100-690, § 6371, 102 Stat. 4181, 4370 (repealed by Fair Sentencing Act of 2010).

²² U.S. SENTENCING COMM’N, SPECIAL REPORT TO CONGRESS: COCAINE AND FEDERAL SENTENCING POLICY, at xi (1995).

²³ Violent Crime Control and Law Enforcement Act of 1994, Pub. L. No. 103-322, 108 Stat. 1796 (codified in scattered sections of 16, 18, 20, 26, 31, 42 U.S.C.).

²⁴ See 18 U.S.C. § 3559(c)(1)(A)(i) (2012).

²⁵ See Kayla Marie Martensen & Brandi Nichole Vigil, *Three Strikes Laws*, in THE ENCYCLOPEDIA OF CRIMINOLOGY & CRIMINAL JUSTICE 1 (Jay S. Albanese ed., 2014); JOHN CLARK ET AL., NAT’L INST. OF JUSTICE, RESEARCH IN BRIEF, “THREE STRIKES AND YOU’RE OUT”: A REVIEW OF STATE LEGISLATION 7–9 (1997) (listing all then-existing three-strike laws); Sathbh

Criminal enforcement of drug laws has become one of the primary functions of federal, state, and municipal law enforcement agencies over the past several decades—with drug-related arrests making up thirteen percent of all arrests in 2012 and eighty-two percent of drug-related arrests involving simple possession offenses.²⁶ In 2014, 44.9% of all drug arrests were for possession or distribution of marijuana.²⁷ Drug offenders comprise by far the largest class of federal prisoners. As of February 2017, over forty-three percent of all federal prisoners were incarcerated for drug offenses.²⁸ The second largest category included weapons, explosives, and arson offenders, who comprised almost seventeen percent of all prisoners.²⁹ Corrections spending represents the third largest category of most states' budgets—after education and health care.³⁰ Most states' prison populations have tripled since 1978, and African Americans are incarcerated in these facilities at over five times the rate of whites.³¹ As has been the case for decades, the United States has by far the highest incarceration rate per capita in the world.³²

The reach of the war on drugs extended beyond courtrooms and prison cells. A series of laws at the state and federal levels made it more difficult for those convicted of drug offenses to successfully reintegrate into their communities and broader society. The American Bar Association has catalogued over forty-five thousand “collateral consequences of convictions.”³³

Walshe, *Massachusetts Opts in to America's Disastrous "Three Strikes" Experiment*, GUARDIAN (Aug. 9, 2012), <https://www.theguardian.com/commentisfree/2012/aug/09/massachusetts-americas-disastrous-three-strikes-experiment> [https://perma.cc/S6RT-Y7UT].

²⁶ *Crime in the United States (2012)*, Table 29, FED. BUREAU OF INVESTIGATIONS, https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/tables/29tabledatadecpdf/table_29_estimated_number_of_arrests_united_states_2012.xls [https://perma.cc/XTH7-86KG]; *Crime in the United States (2012)*, Arrest Table, FED. BUREAU OF INVESTIGATIONS, <https://ucr.fbi.gov/crime-in-the-u.s/2012/crime-in-the-u.s.-2012/persons-arrested> [https://perma.cc/48TC-F32R].

²⁷ *Crime in the United States (2014)*, FED. BUREAU OF INVESTIGATIONS, <https://ucr.fbi.gov/crime-in-the-u.s/2014/crime-in-the-u.s.-2014/persons-arrested/main> [https://perma.cc/RQ4A-8U62].

²⁸ *Inmate Statistics—Offenses*, FED. BUREAU OF PRISONS (last updated Feb. 25, 2017) https://www.bop.gov/about/statistics/statistics_inmate_offenses.jsp [https://perma.cc/SF4S-QQHS].

²⁹ *Id.*

³⁰ MICHAEL MITCHELL & MICHAEL LEACHMAN, CTR. ON BUDGET & POLICY PRIORITIES, CHANGING PRIORITIES: STATE CRIMINAL JUSTICE REFORMS AND INVESTMENTS IN EDUCATION I (2014), <http://www.cbpp.org/sites/default/files/atoms/files/10-28-14sfp.pdf> [https://perma.cc/W3G4-S2CD].

³¹ THE SENTENCING PROJECT, THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS 3 (2016). According to the same source, in eleven states, at least one in twenty adult black males is in prison, and in an additional eleven, the incarceration rate of African Americans is at least seven times the incarceration rate of whites. *Id.* at 6. In Hawaii, the state with the lowest racial disparity, African Americans are more than twice as likely to be imprisoned as whites. *Id.*

³² See Michelle Ye Hee Lee, *Yes, U.S. Locks People Up at a Higher Rate Than Any Other Country*, WASH. POST (July 7, 2015), https://www.washingtonpost.com/news/fact-checker/wp/2015/07/07/yes-u-s-locks-people-up-at-a-higher-rate-than-any-other-country/?utm_term=.44bfb5fb6fc1 [https://perma.cc/84P9-KMNF].

³³ *Collateral Consequences of Conviction Project*, ABA http://www.americanbar.org/groups/criminal_justice/niccc.html [https://perma.cc/94QS-BUMH].

Falling into sixteen categories, these barriers to re-entry affect almost every aspect of life—from eligibility for social services, professional licenses, housing, and student loans, to parental rights, immigration status, and even volunteer opportunities.³⁴

II. A COURSE CORRECTION

Recent developments in state law indicate that national drug policy is shifting towards a more integrated approach incorporating prevention, treatment, and recovery. After decades of tough-on-crime policies, states as diverse as California, Texas, Georgia, and Maryland have made efforts in recent years to reduce both prison populations and recidivism rates. Ballooning costs, coupled with questionable outcomes, have been an impetus for reform in budget-strapped states. As Michael Thompson of the Council for State Governments has put it, the question policymakers are asking across the states is, “[C]an we get a better return on our investment?”³⁵

Many reforms have focused on the “front end” of the criminal justice system. These have included reclassifying certain drug offenses (as in Utah, Nebraska, Ohio, and North Carolina, among other states), revising mandatory minimums (as in Oregon, Georgia, Hawaii, and Louisiana, for instance), establishing presumptive probation for certain offenses (as in Mississippi, South Dakota, Kentucky, Ohio, and others), and reducing the crack-powder cocaine sentencing disparity (as in Missouri, Ohio, and South Carolina).³⁶ In 2015, Alabama enacted reforms that included establishing a new felony class for certain low-level drug offenses and authorizing certain incarcerated persons to serve “split” prison-probation sentences for drug convictions³⁷ despite then-Alabama Senator and now-U.S. Attorney General Jeff Sessions’s opposition to similar reforms at the federal level.³⁸

Other state reforms have centered around the “back end” of the system, emphasizing jail and prison programs and other re-entry reforms designed to ensure that, when individuals are released back into their communities, they have more tools to call upon to succeed. In my home state of Rhode Island, the General Assembly passed legislation changing the “good time” system

³⁴ See *National Inventory of Collateral Consequences of Conviction*, THE COUNCIL OF STATE GOVERNMENTS JUSTICE CTR., <https://niccc.csgjusticecenter.org/> [https://perma.cc/M3GP-CNVE].

³⁵ Rebecca Beitsch, *States at a Crossroads on Criminal Justice Reform*, PEW CHARITABLE TRUSTS: STATELINE (Jan. 28, 2016), <http://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2016/01/28/states-at-a-crossroads-on-criminal-justice-reform> [https://perma.cc/PH2B-GZSU] (internal quotation marks omitted).

³⁶ See PEW CHARITABLE TRUSTS, *31 STATES REFORM CRIMINAL JUSTICE POLICIES THROUGH JUSTICE REINVESTMENT 2* (2016), http://www.pewtrusts.org/~media/assets/2016/01/pspp_jrreformmatrixoverview.pdf [https://perma.cc/K7GY-YYR].

³⁷ S.B. 67, 2015 Leg., Reg. Sess. (Ala. 2015).

³⁸ See AMES C. GRAWERT, BRENNAN CTR. FOR JUSTICE, *ANALYSIS: SEN. JEFF SESSIONS’S RECORD ON CRIMINAL JUSTICE 1* (2017), <https://www.brennancenter.org/sites/default/files/analysis/SenatorJeffSessionsRecordonCriminalJustice.pdf> [https://perma.cc/XJV5-WFSX].

and allowing inmates to earn seventeen days a month of early release credit by participating in anger management and other such behind-the-wall programs.³⁹ These reforms have led to a seventeen percent reduction in the incarceration rate and a six percent drop in recidivism rates.⁴⁰

At the federal level, too—and largely for similar combinations of reasons—the twenty-first century has ushered in early hints of a changed approach. President Barack Obama’s first ONDCP Director, Gil Kerlikowske, announced in his first interview that he was ending the war on drugs, whose terminology he saw as counterproductive, in favor of a “twenty-first century approach.”⁴¹ While Kerlikowske did not go as far as some reformers may have initially hoped, his voice was a prominent one in support of crack-powder sentencing reform, overdose prevention, and syringe-exchange programs. His view of drug addiction as a public health challenge, rather than a criminal justice one, helped change the rhetoric around the issue.

The selection of Kerlikowske’s successor, Michael Botticelli, was a further step towards changing both the strategy and the battlefield in the war on drugs. Botticelli, the first ONDCP Director to himself be in substance abuse recovery, was also the first not to hail from a political, police, or military background.⁴² Botticelli’s training was in the substance abuse treatment field, having served for almost two decades in the Massachusetts Department of Public Health, including as director of the Bureau of Substance Abuse Services from 2003 to 2012.⁴³ As Tom McLellan, a founder of the Treatment Research Institute in Philadelphia and an expert in substance abuse, put it, Botticelli “is the living example of what should be an expectable result of treatment—recovery.”⁴⁴ Botticelli was also keenly aware of the stigma associated with substance use disorders, having once admitted to having found it “easier to come out as being a gay man than a person in recovery.”⁴⁵ In Botticelli, those struggling with addiction or walking the path of recovery found a heartfelt friend in the highest of places.

³⁹ See Katherine Gregg, *R.I. to Review Prison, Parole, Probation Systems*, PROVIDENCE J. (July 7, 2015, 12:01 AM), <http://www.providencejournal.com/article/20150707/NEWS/150709582> [https://perma.cc/E4T3-C5NS].

⁴⁰ *Id.*

⁴¹ See Lucia Graves, *The Last Drug Czar?*, ATLANTIC (Mar. 13, 2014), <https://www.theatlantic.com/politics/archive/2014/03/the-last-drug-czar/439419/> [https://perma.cc/5GBT-9HX3]; see also Max Fisher, *How Obama Wages the War on Drugs*, ATLANTIC (May 14, 2010), <https://www.theatlantic.com/entertainment/archive/2010/05/how-obama-wages-the-war-on-drugs/345587/> [https://perma.cc/H2RE-JE4Y].

⁴² See Graves, *supra* note 41.

⁴³ See Sacha Pfeiffer, *Boston Medical Center Picks Ex-Obama Drug Czar to Run Opioid Center*, BOS. GLOBE (Mar. 22, 2017), <https://www.bostonglobe.com/business/2017/03/22/boston-medical-center-picks-obama-drug-czar-run-opioid-center/uVS8g3WY2RCskqRiKmTqqN/story.html> [https://perma.cc/R9DM-DKUX].

⁴⁴ Alan Schwarz, *Michael Botticelli Is a Drug Czar Who Knows Addiction Firsthand*, N.Y. TIMES (Apr. 25, 2015), <https://www.nytimes.com/2015/04/26/us/michael-botticelli-is-a-drug-czar-who-knows-addiction-firsthand.html> [https://perma.cc/SQ8H-WGH9].

⁴⁵ *Id.*

For its part, the Obama Justice Department—particularly in its second term—worked within the confines of statutes, federal case law, and the United States Sentencing Guidelines to focus law enforcement resources on the most serious categories of drug offenders. In memoranda from 2010,⁴⁶ 2013,⁴⁷ and 2014,⁴⁸ then-Attorney General Eric Holder issued guidance to federal prosecutors designed to ensure that mandatory minimums and recidivist enhancements were largely reserved for drug offenders with significant criminal history, leadership roles, or ties to large drug trafficking organizations.⁴⁹ The so-called Cole Memo,⁵⁰ issued by Deputy Attorney General James Cole in 2013, reflected another effort by the Department of Justice to shift drug enforcement priorities.⁵¹ The guidance reiterated that marijuana remained illegal at the federal level, but that the Department would rely on states that had legalized it to varying extents to enact tough regulations.⁵²

Against this executive branch backdrop, Congress was taking tentative but significant steps to reverse—or at least alter—course on federal drug policy. In 2010, both the House and the Senate overwhelmingly passed the bipartisan Fair Sentencing Act, which lowered the gross disparity between crack cocaine and powder cocaine sentences.⁵³ While many of us in both chambers supported eliminating the disparity altogether, the Fair Sentencing Act's passage reflected changing attitudes among some of the very same people who had fiercely advocated for the cocaine mandatory minimums in the first place.

In the years since, broad bipartisan coalitions have formed in support of sentencing and prison reform legislation, as well as bills designed to mitigate the collateral consequences facing individuals with drug-related convictions.⁵⁴ In the last two Congresses,⁵⁵ Senators Richard J. Durbin and Mike

⁴⁶ Memorandum from Eric Holder, Att'y Gen., U.S. Dep't of Justice, to Fed. Prosecutors (July 15, 2011) [hereinafter Holder Memo (2011)] (on file with the Harvard Law School Library).

⁴⁷ Memorandum from Eric Holder, Att'y Gen., U.S. Dep't of Justice, to U.S. Att'ys and Assistant Att'y Gen. for the Crim. Division (Aug. 12, 2013) [hereinafter Holder Memo (2013)] (on file with the Harvard Law School Library).

⁴⁸ Memorandum from Eric Holder, Att'y Gen., U.S. Dep't of Justice, to Dep't of Justice Att'ys (Sept. 24, 2014) [hereinafter Holder Memo (2014)] (on file with the Harvard Law School Library).

⁴⁹ See Holder Memo (2011), *supra* note 46, at 2–3; Holder Memo (2013), *supra* note 47, at 1; Holder Memo (2014), *supra* note 48, at 1.

⁵⁰ Memorandum from James M. Cole, Deputy Att'y Gen., U.S. Dep't of Justice, to U.S. Att'ys (Aug. 29, 2013) (on file with the Harvard Law School Library).

⁵¹ See *id.*

⁵² See *id.* at 2.

⁵³ Fair Sentencing Act of 2010, Pub. L. No. 111-220, §1, 124 Stat. 2372 (2010) (codified at 21 U.S.C. § 801 (2012)).

⁵⁴ The coalition actively promoting sentencing and prison reform in the 114th Congress included groups as diverse as the American Civil Liberties Union (ACLU), Law Enforcement Leaders to Reduce Crime and Incarceration, the National District Attorney's Association, the International Association of Police Chiefs, the Major County Sheriffs' Association, and Concerned Veterans of America. See, e.g., Adam Brandon & Todd Cox, *It's Time To Vote on Revised Sentencing Reform and Corrections Act*, HILL (May 24, 2016), <http://thehill.com/>

Lee have introduced the Smarter Sentencing Act, which includes provisions to make the Fair Sentencing Act retroactive, to expand the so-called “safety valve” (allowing judges to sentence federal drug offenders below applicable mandatory minimum sentences), and to reduce the mandatory minimum sentence of life without parole for a third or subsequent drug felony conviction.⁵⁶ Last Congress, the Smarter Sentencing Act had twenty-five cosponsors—including Democrats such as Senators Patrick Leahy, Cory Booker, and myself, as well as Republicans such as Senators Ted Cruz, Jerry Moran, and Johnny Isakson.⁵⁷ Such bipartisan efforts, like those undertaken in Republican-run states, suggest that criminal justice reform holds appeal to both parties.⁵⁸

Likewise, along with Senators Rob Portman and John Cornyn, respectively, I introduced my prison reform bill in the 113th and 114th Congresses. Most recently named the CORRECTIONS Act, the bill requires the Department of Justice to conduct risk assessments on federal inmates and to use the results to assign them to appropriate recidivism reduction programs, including work and education programs, drug rehabilitation, and job-training programs.⁵⁹ Eligible prisoners who successfully complete these programs would be able to earn early release⁶⁰ and may spend the final portion of their remaining sentences in home confinement or halfway houses.⁶¹ The CORRECTIONS Act enjoyed the support of Republicans and Democrats alike and, as

blogs/congress-blog/judicial/280908-its-time-to-vote-on-revised-sentencing-reform-and-corrections [https://perma.cc/E4P8-PRGK]; Letter from Karin Johanson, Dir., and Jesselyn McCurdy, Senior Legislative Counsel, Wash. Legislative Office, Am. Civil Liberties Union, to Senator Charles Grassley, Chairman, and Senator Patrick Leahy, Member, Senate Judiciary Comm. (Oct. 19, 2015), <https://www.aclu.org/letter/aclu-supports-s-2123-sentencing-reform-and-corrections-act-2015> [https://perma.cc/6WY6-9MUD]; Press Release, Law Enf’t Leaders to Reduce Crime and Incarceration, Over 70 Top Police Chiefs and Prosecutors Urge Congress to Pass Criminal Justice Reform (Jan. 20, 2016), <http://lawenforcementleaders.org/wp-content/uploads/2016/01/SRCA-Letter-of-Support-Press-Release.pdf> [https://perma.cc/NP5L-5SWJ].

⁵⁵ While this Foreword focuses on Senate legislative efforts, there were parallel and coordinated efforts on the House side. *See, e.g.*, Jacob Sullum, *New Bipartisan Legislation Would Make Federal Sentences Less Mindlessly Punitive*, FORBES (Oct. 8, 2015), <https://www.forbes.com/sites/jacobsullum/2015/10/08/new-bipartisan-bill-would-make-federal-sentences-less-mindlessly-punitive/#7aa7394f4741> [https://perma.cc/K5AL-WB8M]; *see also House Judiciary Committee Approves Bipartisan Sentencing Reform Legislation*, HOUSE OF REPRESENTATIVES JUDICIARY COMM. (Nov. 18, 2015), <https://judiciary.house.gov/press-release/house-judiciary-committee-approves-bipartisan-sentencing-reform-legislation/> [https://perma.cc/5Q2J-V8DA].

⁵⁶ Smarter Sentencing Act, S. 502, 114th Cong. §§ 3–5 (2015).

⁵⁷ *Cosponsors: S.502—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/502/cosponsors> [https://perma.cc/3DPB-S96Z].

⁵⁸ While criminal justice reform appeals to many ideological conservatives determined to corral the spiraling costs of incarceration, others are drawn to reform by moral, religious, and civil rights-based imperatives.

⁵⁹ Sentencing Reform and Corrections Act, S. 2123, 114th Cong. §§ 202–06 (2015).

⁶⁰ *Id.* at § 202(b).

⁶¹ *Id.* at § 208(a)(4).

a standalone bill in 2014, sailed through the Judiciary Committee on a fifteen to two vote.⁶²

Elements of the Smarter Sentencing and CORRECTIONS Acts were combined into a comprehensive criminal justice reform package known as the Sentencing Reform and Corrections Act. While election year dynamics and opposition to the sentencing component of the bill from certain prominent Republicans, including Senators Jeff Sessions and Tom Cotton, served as obstacles to a Senate-wide vote, by the end of the 114th Congress, the Sentencing Reform and Corrections Act had thirty-six cosponsors from both parties.⁶³ The bill had received the endorsement of the National District Attorneys Association and the International Association of Chiefs of Police, among other organizations.⁶⁴

This “course correction” reflected changing attitudes toward addiction. As far back as 1784, the father of American psychiatry, Dr. Benjamin Rush, viewed addiction as a disease and not a moral failure.⁶⁵ While it has taken over two centuries to heed his words, a consensus has emerged, thanks in part to neuroscientific advances that have brought to light the strong genetic component of addiction, that it is a disease of physiological and psychological origins that cannot be eradicated through law enforcement alone.⁶⁶ This growing consensus, in turn, has helped steer federal drug policy from an almost exclusively punitive model to one that balances retribution and incapacitation with rehabilitation and access to treatment and other necessary services.

Last November, Surgeon General Vivek H. Murthy released a report devoted entirely to the science and consequences of addiction.⁶⁷ While the report did not unveil new factual information, it was groundbreaking in its scientific approach and focus on addiction as a public health crisis.

In this context, and prompted by the sheer scale and demographic reach of the opioid epidemic,⁶⁸ the Republican-controlled Congress overwhelm-

⁶² See *Whitehouse-Cornyn Prison Reform Bill Approved by Judiciary Committee*, SENATOR SHELDON WHITEHOUSE (Mar. 6, 2014), <https://www.whitehouse.senate.gov/news/release/whitehouse-cornyn-prison-reform-bill-approved-by-judiciary-committee> [https://perma.cc/GFQ7-EK5G].

⁶³ *Cosponsors: S.2123—114th Congress (2015–2016)*, CONGRESS.GOV, <https://www.congress.gov/bill/114th-congress/senate-bill/2123/cosponsors> [https://perma.cc/YP5D-BUP8].

⁶⁴ Press Release, Senator Sheldon Whitehouse, Sentencing Reform & Corrections Act Expands Bipartisan Support (Apr. 28, 2016), <https://www.whitehouse.senate.gov/news/release/sentencing-reform-and-corrections-act-expands-bipartisan-support> [https://perma.cc/8ZFW-LN7J].

⁶⁵ See Brian S. Katcher, *Benjamin Rush’s Educational Campaign Against Hard Drinking*, 83 AM. J. PUB. HEALTH 273, 276 (1993).

⁶⁶ Redonna K. Chandler et al., *Treating Drug Abuse and Addiction in the Criminal Justice System: Improving Public Health and Safety*, 301 JAMA 183, 183 (2009).

⁶⁷ See OFFICE OF SURGEON GEN., U.S. DEP’T OF HEALTH & HUMAN SERVS., *FACING ADDICTION IN AMERICA: THE SURGEON GENERAL’S REPORT ON ALCOHOL, DRUGS, AND HEALTH* (2016).

⁶⁸ According to the Department of Health and Human Services, the nation is “in the midst of an unprecedented opioid epidemic.” U.S. DEP’T OF HEALTH & HUMAN SERVS., *FACTSHEET*:

ingly passed the Comprehensive Addiction and Recovery Act (CARA) in 2016.⁶⁹ As coauthors of the bill, the first major addiction legislation in four decades, Senator Portman and I set out to ensure that federal dollars are allocated toward evidence-based practices that have proved successful across the states. The law was born out of the recognition that the opioid epidemic demands an all-hands-on-deck approach and collaboration among public health, law enforcement, and treatment professionals.

The bill's endorsement by hundreds of organizations—from the Major County Sheriffs, the National Association of Attorneys General, and the Fraternal Order of the Police to the National Council on Behavioral Health and Community Anti-Drug Coalitions of America—coupled with its smooth passage, suggest broad consensus behind the idea that we cannot incarcerate ourselves out of the addiction crisis.⁷⁰ While the traditional tools of interdiction and enforcement have a role to play, so too do prescription drug monitoring programs, physician and medical student education, and peer-based recovery initiatives. Policymakers must also face the fact that, because they make gainful employment, stable housing, access to loans, and education more difficult, barriers to re-entry for individuals who have served their sentences is not only fundamentally unfair, but also contrary to public safety.⁷¹

III. SUMMARY OF ARTICLES

In *Beyond the War: The Evolving Nature of the U.S. Approach to Drugs*, Don Stemen chronicles federal and state responses to drug use and

THE OPIOID EPIDEMIC: BY THE NUMBERS 1 (2016). Center for Disease Control and Prevention figures suggest that, “[s]ince 1999, the rate of overdose deaths involving opioids—including prescription opioid pain relievers and heroin—[has] nearly quadrupled, and over 165,000 people have died from prescription opioid overdoses” during that time period. *Id.*

⁶⁹ See Comprehensive Addiction and Recovery Act, Pub. L. 114-198, 130 Stat. 695 (2016); *Actions Overview: S.524—114th Congress (2015–2016)*, <https://www.congress.gov/bill/114th-congress/senate-bill/524/actions> [<https://perma.cc/QGS8-LSBY>].

⁷⁰ *AGs Support Federal Legislation to Combat Epidemic of Heroin Addiction and Prescription Drug Abuse*, NAT'L ASS'N OF ATTORNEYS GEN., <http://www.naag.org/naag/media/naag-news/ags-support-federal-legislation-to-combat-epidemic-of-heroin-addiction-and-prescription-drug-abuse.php> [<https://perma.cc/5W58-Z3HV>]; Letter from National Fraternal Order of Police to Paul Ryan, Speaker, and Nancy Pelosi, Minority Leader, U.S. House of Representatives, and Mitch McConnell, Majority Leader, and Harry Reid, Minority Leader, U.S. Senate (July 7, 2016), https://fop.net/CmsDocument/Doc/ltr_2016-0707-1.pdf [<https://perma.cc/FEF4-K4CF>]; *130+ National Anti-Drug Groups Now Back the Comprehensive Addiction & Recovery Act*, SENATOR ROB PORTMAN (Feb. 24, 2016), <https://www.portman.senate.gov/public/index.cfm/2016/2/130-national-anti-drug-groups-now-back-the-comprehensive-addiction-and-recovery-act> [<https://perma.cc/Y3H9-Q3BC>]; *230+ National Anti-Drug Groups Now Back the Comprehensive Addiction & Recovery Act*, SENATOR ROB PORTMAN (July 7, 2016), <https://www.portman.senate.gov/public/index.cfm/2016/7/230-national-anti-drug-groups-now-back-the-comprehensive-addiction-recovery-act> [<https://perma.cc/3WUM-2ACB>].

⁷¹ See, e.g., Lorelai Laird, *Ex-Offenders Face Tens of Thousands of Legal Restrictions, Bias and Limits on Their Rights*, ABA JOURNAL (June 1, 2013), http://www.abajournal.com/magazine/article/ex-offenders_face_tens_of_thousands_of_legal_restrictions [<https://perma.cc/9JJP9-C6YV>].

drug offenses preceding, during, and following the inception of the war on drugs. Stemen argues that it was not until the late 1970s that the factors seen as creating the war on drugs emerged, including “rising rates of drug use and crime, increasing politicization of crime, decreasing confidence in rehabilitation, and calls to limit judicial and parole board discretion.” As patterns of drug use increased during this time, politicians capitalized on growing fears and gained electoral support by presenting themselves as “law and order” candidates. These developments contributed to a shift in framework from a rehabilitative model of drug policy to one centered on the criminal justice system. As a result, Stemen contends, structure and determinacy, along with mandatory minimums, returned to drug-related sentencing.

Stemen catalogues how the primary sentencing policies used in the war on drugs led to an explosion in the use of prisons during the 1980s and 1990s. Both at the state and federal levels, authorities responded to the war on drugs by increasing the number of drug-related crimes, increasing the applicable sentence ranges, and creating mandatory sentences and sentence enhancements. The author concludes by looking at the short- and long-term effects of evolving views on specific drugs such as legal marijuana and opioids.

In *It's Time to Rein in Employer Drug Testing*, Stacy Hickox describes existing state and federal employer drug testing policies, which allow unfettered testing of job applicants and employees. Hickox argues that state and federal employers should reform these policies so as to respect a more individualized approach. According to Hickox, the testing itself is highly inaccurate, most employers using no more than instant urine tests prone to producing false positive results. Moreover, Hickox argues, the tests are inaccurate indicators of impairment and intoxication—showing prior use but not necessarily picking up intoxication-causing ingestion.

Hickox argues that the legal use of medical marijuana poses its own challenge. For one, urine tests cannot differentiate between a positive test resulting from medical marijuana use and positive tests resulting from the use of other banned substances. If an employee tests positive—including for use of medical marijuana—there are few restrictions on an employer's choice of consequences and hardly any focus on rehabilitation or treatment.

Hickox argues that current drug testing policies prioritize employers' interests above employee privacy infringements. To rectify what she terms an “ad hoc approach,” Hickox advocates for a common approach in which testing would be limited to employees who are reasonably suspected of being impaired or in situations in which their impairment would cause substantial harm. She reasons that employers should be restricted in their ability to discipline employees for positive tests when impairment does not affect performance.

Ameet Sarpatwari, Michael S. Sinha, and Aaron S. Kesselheim explore the causes underlying the rising opioid epidemic in their article, *The Opioid Epidemic: Fixing a Broken Pharmaceutical Market*. They argue that prac-

tices within the pharmaceutical market helped create and sustain the current epidemic of opioid over- and misuse, primarily through weak patenting standards, fraudulent advertising, and anticompetitive business practices. While the article focuses primarily on the opioid crisis in the United States, the authors argue that the challenges associated with prescription opioids reflect an overall failure of the pharmaceutical market.

The article begins by outlining the rise of prescription opioid use that has led to four million Americans overusing opioids, a fourfold increase in fatal overdoses, and rampant over-prescription. The use of opioids began, according to the authors, with the under-treatment of pain in adults. Studies highlighting “chronic, non-malignant pain” in adults were used to promote “aggressive” treatments, encouraging doctors to take pain management as seriously as a “fifth vital sign.” As this shift towards prioritizing pain management was occurring, experts painted the potential for opioid abuse as a “medical myth.” These developments culminated in the Federal Drug Administration’s approval of OxyContin and ensuing sales of the substance exceeding two billion dollars. The authors submit that this sales boom was aided by regulatory enablement in the form of weak patent standards and enforcement actions that encouraged misrepresentation in marketing. The article concludes by proposing possible solutions to combat certain pharmaceutical companies’ monopolization and misuse of the prescription opioid industry.

In *Engaging Health Insurers in the War on Prescription Painkillers*, Valarie Blake argues that the federal government must work harder to engage health insurance companies as partners in the war on prescription opioid abuse. While insurers pay for the majority of opioids prescribed in this country and determine the extent to which most Americans have access to comprehensive addiction treatment, the current federal regulatory scheme largely ignores their role in combating the opioid abuse epidemic.

The current regulatory system, according to Blake, focuses on physicians and pharmacies and fails to address the role played by insurers in the prescription opioid abuse epidemic. She notes that, while insurers covered forty-two percent of prescription opioid spending in 1999, by 2012 the burden borne had almost doubled to eighty-two percent. Most insurers fail to cover proven alternatives to traditional opioid painkillers including physical therapy, psychotherapy, aerobic training, and opioids that are harder to abuse. For the most part, they also fail to cover urine screening tests that can be used by physicians to determine whether patients are abusing, or at risk of abusing, prescription opioids. In addition to covering such alternatives, insurers could increase physician education, cap the amount of opioids covered for individual patients, and mandate that patients try non-addictive pain treatments before receiving opioid prescriptions.

Even with the coverage expansion of the Patient Protection and Affordable Care Act (ACA), insurers, including over two-thirds of state benchmark plans, are falling short of the law’s mandates for addiction treatment cover-

age. If the Act were repealed, insurance companies would likely reduce coverage for addiction treatment, deny coverage to people with a preexisting history of drug addiction, and place lifetime caps on addiction treatment coverage.

Finally, Ryan Stoa argues in *Marijuana Appellations: The Case for Cannabicultural Designations of Origin* that the legalization and regulation of marijuana does not necessarily compel a “Big Marijuana” commoditization narrative. Instead, marijuana can viably be regulated through appellations, or local certified designations of origin based on products’ distinct regional or stylistic qualities. Appellations, which are most commonly used in the wine industry, create mandatory differentiation in the market rather than consolidation. The article posits that appellations are a natural model for the marijuana industry’s growth because marijuana has a large number of unique plant varieties that grow in different environmental conditions and the current state-by-state legalization process fosters a hyper-localized approach to regulation.

Stoa further argues that American Cannabicultural Areas (ACAs)—the regulatory model for implementing marijuana appellations—also protect consumers. Local designations would convey product information to consumers that was never provided when marijuana was sold on the black market. ACAs would also protect small-scale marijuana farmers and promote regional brands. The article concludes by exploring the benefits that the ACA model provides and its potential interaction with the parallel hemp market.

CONCLUSION

Writing this Foreword feels different than it might have a year ago. Despite all the progress in state and federal policies and attitudes about drug control, there is real uncertainty today about the direction of American drug policy.

Throughout the campaign, President Trump painted a dystopian vision of the country—repeatedly using the term “inner city” as a stand-in for “African Americans”⁷² and misrepresenting crime data to score political points and emit familiar dog whistles.⁷³ This call for a return to tough-on-crime

⁷² Drake Baer, *Trump’s “Inner Cities” Fetish is Nostalgic, Messy Racism*, N.Y. MAG: SCI. OF US (Oct. 12, 2016), <http://nymag.com/scienceofus/2016/10/why-trump-saying-inner-cities-is-racist-and-wrong.html> [https://perma.cc/M2A9-KZAX].

⁷³ See, e.g., Michelle Ye Hee Lee, *Fact-Checking Trump’s Rhetoric on Crime and the “American Carnage,”* WASH. POST: FACT CHECKER (Jan. 30, 2017), <https://www.washingtonpost.com/news/fact-checker/wp/2017/01/30/fact-checking-trumps-rhetoric-on-crime-and-the-american-carnage/> [https://perma.cc/4LW5-UF68]; Philip M. Stinson, *Crime Stats Should Inform the Public. Trump Is Misusing Them to Scare Us Instead.*, WASH. POST (Feb. 10, 2017), <https://www.washingtonpost.com/posteverything/wp/2017/02/10/crime-stats-should-inform-the-public-trump-is-misusing-them-to-scare-us-instead/> [https://perma.cc/ZZV4-4R6S].

policies of the past to “make America safe again” implies a contrast to current policies.⁷⁴

Ten days after the election, President Trump named then-Senator Jeff Sessions as his pick for Attorney General. As many of us pointed out during his confirmation hearings before the Senate Judiciary Committee, Senator Sessions spent years as one of the most vocal obstacles to criminal justice reform in Congress.⁷⁵ Since his days in Alabama law enforcement, he has held some extreme views on criminal justice issues.⁷⁶ In the Senate, he dismissed the effectiveness of anti-recidivism programming and stalled passage of re-entry legislation first proposed by President George W. Bush.⁷⁷ His headline-grabbing remark in April of last year that “good people don’t smoke marijuana” hinted at an outdated view of addiction as a moral failing rather than a public health concern.⁷⁸ And during Senate debate of the Comprehensive Addiction and Recovery Act, Sessions summed up his approach to the opioid crisis by saying, “[W]e’re going to have to enhance prosecutions. There just is no other solution.”⁷⁹

As of this writing, President Trump has issued three executive orders “designed to restore safety in America.”⁸⁰ They include directives to come up with “strategies to reduce crime, including, in particular, illegal immigration, drug trafficking and violent crime,”⁸¹ to increase information sharing as it relates to transnational drug trafficking,⁸² and to use federal law to prose-

⁷⁴ The theme of the Republican National Convention’s first night, “Make America Safe Again,” was also a frequent refrain during President Trump’s 2016 presidential campaign. See Mara Liasson, *GOP Convention Opens with “Make America Safe Again” Theme*, NPR (July 18, 2016, 5:30 PM), <http://www.npr.org/2016/07/18/486507575/gop-convention-opens-with-make-america-safe-again-theme> [<https://perma.cc/M46B-AZMD>]. It is difficult not to read into this theme the implication that safety requires a return to past policies and attitudes, and that recent approaches—reflected in legislation such as the Sentencing Reform and Corrections Act—make us less safe.

⁷⁵ Deena Zaru, *As Sessions Nomination Advances, Criminal Justice Reform Hangs in the Balance*, CNN POLITICS (Feb. 2, 2017) <http://www.cnn.com/2017/02/01/politics/obama-trump-criminal-justice-reform/> [<https://perma.cc/6YHX-ZDMC>].

⁷⁶ See Pema Levy, *In Alabama, Sessions Held Views on Criminal Justice Far Outside Today’s Mainstream*, MOTHER JONES (Jan. 10, 2017), <http://www.motherjones.com/politics/2017/01/alabama-jeff-sessions-held-views-criminal-justice-would-scare-reformers-today> [<https://perma.cc/7XSB-2U6E>].

⁷⁷ Grant Smith, *Jeff Sessions Will Double Down on Failed Drug War*, HILL (Feb. 2, 2017), <http://thehill.com/blogs/pundits-blog/crime/317593-jeff-sessions-will-double-down-on-failed-drug-war> [<https://perma.cc/CH6G-H3XH>].

⁷⁸ Christopher Ingraham, *Trump’s Pick for Attorney General: “Good People Don’t Smoke Marijuana.”* WASH. POST: WONKBLOG (Nov. 18, 2016), <https://www.washingtonpost.com/news/wonk/wp/2016/11/18/trumps-pick-for-attorney-general-good-people-dont-smoke-marijuana/> [<https://perma.cc/YX8B-DS9B>].

⁷⁹ Grant Smith, *Jeff Sessions Will Double Down on Failed Drug War*, HILL: PUNDITS BLOG (Feb. 2, 2017), <http://thehill.com/blogs/pundits-blog/crime/317593-jeff-sessions-will-double-down-on-failed-drug-war> [<https://perma.cc/MZM3-XE6R>].

⁸⁰ Laura Jarrett, *Trump Signs Three New Executive Orders on Crime Reduction*, CNN POLITICS (Feb. 10, 2017) <http://www.cnn.com/2017/02/09/politics/trump-executive-orders-crime-reduction/> [<https://perma.cc/LT34-EY28>].

⁸¹ Exec. Order No. 13776, 82 Fed. Reg. 10699 (Feb. 9, 2017).

⁸² Exec. Order No. 13773, 82 Fed. Reg. 10691 (Feb. 9, 2017).

cute people who commit crimes against police officers—even though such individuals already face severe penalties under existing laws in every state.⁸³

Yet despite this change in rhetoric and priorities, I remain hopeful that Congress and the states will continue to lead the way to commonsense, evidence-based drug policy. In a February 2017 address to a gathering of the Major County Sheriffs and Major City Chiefs, President Trump criticized President Obama for his anti-drug efforts and vowed to “liberate our communities from [drug traffickers’] terrible grip of violence.”⁸⁴ Following the event, a group of more than 175 prominent law enforcement officers from all fifty states issued a report urging the Administration to refrain from using “arrest, conviction, and prison as the default response for every broken law.”⁸⁵

“Decades of experience,” they wrote, “have convinced us of a sobering reality: today’s crime policies, which too often rely only on jail and prison, are simply ineffective in preserving public safety.”⁸⁶

The articles in this volume take stock of those policies in light of the shifting American cultural and political landscape. “Beyond the War on Drugs” is a valuable guidebook for policymakers at every level charged with improving public health and safety and promoting justice.

⁸³ Exec. Order No. 13774, 82 Fed. Reg. 10695 (Feb. 9, 2017).

⁸⁴ Christopher Ingraham, *In Trump’s “Ruthless” Vow, Experts See a Return to the Days of the Drug War*, WASH. POST: WONKBLOG (Feb. 10, 2017), https://www.washingtonpost.com/news/wonk/wp/2017/02/10/in-trumps-ruthless-vow-experts-see-a-return-to-the-days-of-the-drug-war/?utm_term=.8090ef3d0127 [<https://perma.cc/V63D-7QLD>].

⁸⁵ Timothy Williams & Richard A. Opper, Jr., *Police Chiefs Say Trump’s Law Enforcement Priorities Are Out of Step*, N.Y. TIMES (Feb. 12, 2017), <https://www.nytimes.com/2017/02/12/us/police-chiefs-trump-law-enforcement-priorities> [<https://perma.cc/KD9P-P6BS>].

⁸⁶ LAW ENFT LEADERS TO REDUCE CRIME & INCARCERATION, FIGHTING CRIME AND STRENGTHENING CRIMINAL JUSTICE: AN AGENDA FOR THE NEW ADMINISTRATION 1 (2017), http://lawenforcementleaders.org/wp-content/uploads/2017/02/LEL_Agenda_for_a_New_Administration.pdf [<https://perma.cc/95BU-GAK3>].