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Analysis: Sen. Jeff Sessions's Record on Criminal Justice

By Ames C. Grawert

This analysis provides a brief summary of Sen. Jeff Sessions's past statements, votes, and practices relating to criminal justice. Specifically, this analysis finds that:

- Sen. Sessions opposes efforts to reduce unnecessarily long federal prison sentences for nonviolent crimes, despite a consensus for reform even within his own party. In 2016, he personally blocked the Sentencing Reform and Corrections Act, a bipartisan effort spearheaded by Sens. Charles Grassley (R-Iowa), Mike Lee (R-Utah), and John Cornyn (R-Texas), and Speaker of the House Paul Ryan (R-Wis.), and supported by law enforcement leadership. As Attorney General, Sen. Sessions could stall current congressional efforts to pass this legislation to recalibrate federal sentencing laws.
- Drug convictions made up 40 percent of Sen. Sessions's convictions when he served as U.S. Attorney for the Southern District of Alabama double the rate of other Alabama federal prosecutors. Today, state and federal law enforcement officers have begun to focus resources on violent crime, and away from archaic drug war policies. But Sen. Sessions continues to oppose any attempts to legalize marijuana and any reduction in drug sentences. As Attorney General, Sen. Sessions could direct federal prosecutors to pursue the harshest penalties possible for even low-level drug offenses, a step backward from Republican-supported efforts to modernize criminal justice policy.
- Unlike many Republican legislators, Sen. Sessions supports the use of "civil asset forfeiture," which allows police to confiscate property from people who may not even be accused of a crime. Sen. Sessions could strengthen this practice at the federal level, or vocally oppose any congressional efforts to end it.
- The Justice Department has brought much-needed oversight to troubled police departments, especially those criticized for targeting or using excessive force on communities of color. Sen. Sessions is deeply skeptical of federal involvement in state and local affairs, including policing. As Attorney General, he could end or significantly curtail these investigations.
- Most conservatives support reentry programs to help former prisoners better reintegrate into society, keeping them away from repeat crime. It is unclear whether Sen. Sessions shares his party's commitment to these recidivism reduction programs. If he does not support them, Sen. Sessions's Justice Department could end requests to Congress for additional funding, or direct scarce resources away from these programs, potentially driving up the recidivism rate.

In brief, Sen. Sessions appears to subscribe to outdated ideas about criminal justice policy that conservatives, progressives, and law enforcement have come to agree do not help reduce crime and unnecessarily increase the prison population. His views place him at odds with top Republicans and the current cross-partisan movement to reform the justice system. As Attorney General, he could stall or reverse recent federal efforts, and disrupt nationwide momentum on the issue.

Sentencing Reform

Sen. Sessions helped draft and pass the Fair Sentencing Act of 2010, which reduced the sentencing disparity between crimes for crack and powder cocaine.¹ At the time, crack cocaine crimes were punished 100 times more harshly than powder cocaine crimes. This drove racial disparities in imprisonment, as crack is more common in communities of color. Sen. Sessions said fixing this disparity would "make the criminal justice system more effective and fair."²

Since then, Sen. Sessions has emerged as one of the fiercest opponents of federal sentencing reform.

Over the last two years, Sen. Sessions led an effort against the Sentencing Reform and Corrections Act ("SRCA"), a modest bipartisan proposal championed by top Republican lawmakers, including Sens. Charles Grassley (R-Iowa) and John Cornyn (R-Texas), Speaker of the House Paul Ryan (R-Wis.), conservative groups including Koch Industries,³ and law enforcement organizations such as the Major Cities Chiefs and National District Attorneys Associations.⁴ The bill would have cautiously reduced mandatory minimum sentences for some nonviolent drug crimes, but would have retained tough penalties for violent crimes.⁵

At a November 2015 hearing on the bill, Sen. Sessions rejected the idea of reform outright, saying that when "mandatory minimums are either eliminated or reduced substantially, it reduces the ability of law [enforcement] officers to negotiate and protect the public." He also claimed that "we've exaggerated the number of people who are serving long sentences for minor offenses."⁶

Sen. Tom Cotton (R-Ark.) fueled further opposition to the bill at a private caucus lunch last January.⁷ The next month, Sens. Sessions and Cotton headlined a congressional briefing in opposition to the bill, along with the Federal Law Enforcement Officers Association. This hearing was held the same day as one convened by supporters of the bill with prominent law enforcement and Republican leadership, including Sens. Grassley and Lee, George W. Bush's Attorney General Michael B. Mukasey, Republican U.S. Attorneys, and the head of the Major Cities Chiefs Association.⁸ Sen. Sessions released a statement on Medium that day branding the reform proposal a "criminal leniency bill" that would increase crime.⁹

Republicans revised the bill to address criticisms from Sens. Sessions, Cotton, Orrin Hatch (R-Utah), and David Perdue (R-Ga.).¹⁰ But Sen. Sessions still would not support it. "Federal drug and sentencing laws have already been considerably relaxed," he wrote in an April 2016 press release. "Congress must examine the potential far-reaching consequences of what has occurred before going any further."¹¹ In a press conference in May, Sen. Sessions stated that there is "no need to weaken [federal] penalties, because they're already on a route of precipitous decline."¹² This view contrasts with top Republicans, including Sen. Grassley, who praised the revised bill as "a comprehensive plan that goes a long way to address over-incarceration, reduce recidivism, and save taxpayer dollars, all while preserving tools to keep violent and career criminals out of our communities."¹³

Despite support from Republican leadership, the White House, and law enforcement leaders, the bill did not reach the Senate floor for a vote. Due to opposition from Sens. Sessions and Cotton, Senate Majority Leader Mitch McConnell (R-Ky.) allowed the bill to falter rather than risk splitting the party.¹⁴

Notably, the alarmist claims about crime Sen. Sessions used to derail the bill proved false. Crime remains at all-time lows, decreasing last year for the 14th year in a row. Though murder has increased in a handful of cities such as Chicago, national murder rates are near historic lows.¹⁵ Further, 27 states, including Georgia, South Carolina, and Texas, have reduced crime and imprisonment rates together over the last decade through reforms championed by Republicans and Democrats.¹⁶

Earlier this week, Sens. Grassley and Dick Durbin (D-Ill.) announced they would reintroduce the SRCA as a priority for both parties.¹⁷

The Attorney General is the voice of the nation's criminal justice system, and the president's closest adviser on crime and policing. As Attorney General, Sen. Sessions could publicly oppose the SRCA and any future sentencing reform efforts, making similar bills politically dangerous, or even impossible to pass. Sen. Sessions could also encourage senators to block these bills, or ask the president to veto them or withhold support.

Drug Law Reform & Prosecutorial Discretion

In 2013, the Obama administration began the "Smart on Crime" initiative, in which Attorney General Eric Holder directed prosecutors to refrain from seeking mandatory minimum sentences for lower-level drug offenses. According to the Justice Department, since the initiative began, "federal prosecutors went from seeking a mandatory minimum penalty for drug trafficking in two-thirds of cases to doing so in less than half of them — the lowest rate on record."¹⁸

During the 12 years that Sen. Sessions served as U.S. Attorney for the Southern District of Alabama, federal data suggest that he shifted resources toward drug offenses, but away from prosecuting violent crimes. Drug cases made up more than 40 percent of his office's convictions, and just 20 percent of convictions for other U.S. Attorneys in Alabama. Sen. Sessions's office also obtained harsher sentences in drug cases — but with a comparable overall rate of recidivism. Sen. Sessions's focus on drug prosecutions reflects the typical prosecutorial beliefs of the 1980s and 1990s.

Federal District		victed Offenders, rious Charge	Average Prison Term for Drug	Overall Rate of Recidivism	
	Drug Crime	Violent Crime	Offenses		
Northern District of Alabama	20.6%	5.3%	53.1 months	24.9%	
Middle District of Alabama	18.5%	3.2%	46.1 months	12.6%	
Southern District of Alabama	40.8%	3.2%	75.3 months	21.0%	

Table 1: Prosecutions by	TIS	Attorneys,	Offices in	Alabama	(1084_86	1088	1003)
Table 1: Frosecutions by	0.5.	Allomeys	Offices in	Alabama	(1904-00,	1900,	1993)

Source: U.S. Dep't of Justice, Bureau of Justice Statistics (1984-86, 1988, 1993).¹⁹

More recently, however, conservatives, progressives, criminologists, researchers, and law enforcement have changed course, realizing that the "lock 'em up and throw away the key" policies of the last several decades are not needed to bring down crime, and help fuel unnecessary incarceration. As Koch Industries executive Mark Holden and former New Orleans police superintendent Ronal Serpas wrote in *The Washington Post* in 2016, police and prosecutors

increasingly support "a data-driven, modern approach to crime — one that targets violent crime while reducing the unnecessary incarceration of low-level offenders. States that have employed these practices have seen crime and incarceration fall together, which preserves resources for law enforcement."²⁰

Despite this cross-partisan evolution, Sen. Sessions's views on drugs appear largely unchanged. At a Senate hearing last April, he called marijuana a "very real danger" and "not the kind of thing that ought to be legalized." "Good people don't smoke marijuana," he concluded.²¹ That same month, Sen. Sessions criticized Holder's "Smart on Crime" initiative at a press conference. "Federal drug prosecutions have dropped 21 percent since 2011," he said. "Actual prosecutions are down. And if you ask the Attorney General [Loretta Lynch] as I did a few months ago: "Why?' She said, "Well, we're working bigger cases.' But sentencing is down, too, so they must not have been a lot bigger cases. So that's always an excuse for prosecutors. I've heard that song for 30 years."²² "Drug trafficking is by nature a violent crime," Sen. Sessions said at a hearing on the Drug Enforcement Agency in June 2016, and decreasing federal drug prosecutions "creates a risk" of higher crime.²³

While many prosecutors have modernized their views on drugs, it appears that Sen. Sessions has not. If Sen. Sessions brings his perspective to the Justice Department, he could reverse the "Smart on Crime" initiative's progress. He could direct U.S. Attorneys to refocus resources on drug cases instead of serious, violent crimes. Moreover, Sen. Sessions could vocally oppose any efforts by Congress or the Sentencing Commission to reform drug policies. And if the SRCA became law, Sen. Sessions could dilute its effect by asking federal prosecutors to bring more severe criminal charges and recommend harsher sentences for drug crimes. How the next Attorney General will deploy the limited resources of the Justice Department's Criminal Division is a critical question.

Civil Asset Forfeiture

Civil asset forfeiture allows law enforcement officials to confiscate property from defendants and individuals accused of crimes, as well as persons whose property may have been involved in a criminal act. Journalists have recently documented how innocent people have lost their homes and cars to these practices.²⁴

In 2014, the value of property seized by federal and local officials through asset forfeiture topped \$5 billion,²⁵ prompting backlash from conservatives, calls for change from Republicans, and a Senate Judiciary Committee hearing on how to reform the process.²⁶ In a press release on that hearing, Sen. Grassley wrote, "Rather than prosecute or even arrest, civil asset forfeiture enables law enforcement to seize property without any proof of wrongdoing."²⁷ Similarly the Heritage Foundation described the practice like this: "This means that police can seize your car, home, money, or valuables without ever having to charge you with a crime. There are many, many stories of innocent people being stripped of their money and property by law enforcement."²⁸

Sen. Sessions, however, vocally supports asset forfeiture. At Sen. Grassley's 2015 hearing, he opposed "any reform" to asset forfeiture, claiming that "95 percent" of forfeitures involve people who have "done nothing in their lives but sell dope." Ending forfeiture, he has said, "would be a huge detriment to law enforcement."²⁹ He went on to say it would be "unthinkable that we would make it harder for the government to take money from a drug dealer than it is for a businessperson to defend themselves in a lawsuit."³⁰

Most asset forfeiture proceedings occur at the state and local level. But federal policies allow states to take more of the proceeds of forfeiture than they normally could, by entering into an "equitable sharing" agreement with the federal government. President Obama briefly suspended the practice in 2015, but reinstituted it last year.³¹ As Attorney General, Sen. Sessions could entrench this practice and encourage more states to take advantage of it. He could also vocally oppose any legislative efforts to reform asset forfeiture, or encourage the president to veto or block any such measures.

"Civil forfeiture takes property without a trial and the property owner must wage a protracted, complex and expensive fight to get it returned," wrote *Washington Post* columnist George Will last month. "The Senate Judiciary Committee might want to discuss all this when considering the nominee to be the next attorney general.³²

Police Oversight

Under President Obama, the Justice Department has investigated more than 20 police departments suspected of violating civil rights, and entered into "consent decrees" requiring those agencies to reform their practices under federal supervision.³³ This is a critical role for the Department, especially now, when the nation is healing from widespread protests against police brutality and just 14 percent of black voters believe the criminal justice system treats all people fairly.³⁴

A Justice Department investigation of the police department in Ferguson, Mo., found that the city's "law enforcement practices [were] directly shaped and perpetuated by racial bias."³⁵ The Justice Department entered into a consent decree with the department last spring, requiring its officers to be trained to de-escalate from conflict situations and avoid the use of force, and directing "an overhaul of the municipal court system" to correct the city's misuse of criminal justice fines.³⁶ Similarly, last August, the Justice Department released a 163-page report on Baltimore, Md.'s police department, describing "a pattern of violations of residents' rights, particularly in poor, predominantly black neighborhoods." The Department and the Baltimore Police are still negotiating a consent decree designed to fix these practices.³⁷ These investigations can provide oft-needed oversight and balance for local police departments that may overstep enforcement practices.

While Sen. Sessions has not spoken specifically about federal supervision of police departments, he has criticized "interference" with police and federal oversight generally.

At a November 2015 hearing called "The War on Police: How the Federal Government Undermines State and Local Law Enforcement," Sen. Sessions criticized Black Lives Matter for making statements about police that are "really radical" and "absolutely false,"³⁸ and claimed that "marches and protests about police do have the tendency to cause [police] to . . . stay under the shade tree, and not walk the streets," therefore driving up crime.³⁹ Questioning the head of the Civil Rights Division about her views on racial disparities in the criminal justice system, Sen. Sessions said "it is clear that police officers all over America are concerned about the Department of Justice."⁴⁰

In a 2008 paper on the topic of federal consent decrees by the Alabama Policy Institute, Sen. Sessions described them as "one of the most dangerous, and rarely discussed, exercised of raw power," saying they amount to an "end run around the democratic process." Sen. Sessions went on to cite his record of opposing federal court settlements as Alabama Attorney General.⁴¹

These comments call into question whether Sen. Sessions would continue Justice Department investigations into police departments. As Attorney General, he could also terminate negotiations over pending consent decrees, or ask courts to withdraw ones already in force. Without federal accountability, police departments now under investigation could fall back on troubled practices, and other departments could be emboldened to escalate their use of force, exacerbating the racial tension plaguing cities across the country.

Prisoner Reentry

From the American Enterprise Institute to the platforms of both major parties, there is broad conservative support for improving prison rehabilitation programs.⁴² After decades of research, politicians, scholars, and law enforcement have concluded programs that provide education, job training, and treatment to prisoners are a cost-effective way to reduce recidivism and help prisoners become productive members of society.⁴³

The Obama administration has taken steps to improve education and reentry options for federal prisoners, including creating a "school district" for federal inmates and ensuring prisoners receive appropriate identification to help them find jobs upon release.⁴⁴ However, some of the most effective programs in the federal system — specifically vocational training designed to teach marketable employment skills — remain under-funded.⁴⁵

Some advocates hypothesize that Sen. Sessions may support reentry reforms.⁴⁶ But the senator's record on the topic is mixed. In 2008, he voted for the Second Chance Act, which authorized \$360 million over two years to fund state and local treatment and training programs for ex-prisoners.⁴⁷ The legislation originated in a proposal made by President George W. Bush in his 2004 State of the Union address.⁴⁸ But before voting for the bill, Sen. Sessions placed a "hold" on it, citing cost and effectiveness concerns, adding weeks of delay to a bill that had already taken years to pass.⁴⁹

At the Senate Judiciary Committee's November 2015 hearing on the SRCA, Sen. Sessions did support vocational training programs for prisoners, saying, "having people in prison begin to work before they are released has real potential." But he expressed doubt about other rehabilitation programs: "My observation over the years of attempts to have education and other kind of character-building programs in prison before they are released doesn't seem to have much benefit."⁵⁰

These programs could falter without an Attorney General committed to them. The Justice Department could end the educational services created by the Obama administration, block requests to Congress to increase funding for these programs, or use its agency authority to redirect funding and attention away from these programs. This could risk driving up the federal recidivism rate.

Conclusion

Sen. Sessions is one of few Republican legislators who does not support bipartisan efforts to reform the nation's criminal justice system. In fact, Sen. Sessions opposed modest efforts championed by top Republicans to decrease federal prison sentences for nonviolent crimes. Placing him as Attorney General could mark a setback for the decade-long effort to make the justice system more effective and fair.

Endnotes

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⁴² For information on the political parties' stances on reentry, see Maurice Chammah, *Two Parties, Two Platforms on Criminal Justice*, THE MARSHALL PROJECT, July 18, 2016, <u>https://www.themarshallproject.org/2016/07/18/two-parties-two-platforms-on-criminal-justice#7</u>. For support among conservatives and think tanks, see David Dagan & Steven M. Teles, *The Conservative War on Prisons*, WASH. MONTHLY, Nov. 2012, <u>http://washingtonmonthly.com/magazine/novdec-2012/the-conservative-war-on-prisons/;</u> Gerard Robinson et al., *Prison Time Should Be Well Spent*, BALTIMORE SUN, Dec. 7, 2016, <u>http://www.baltimoresun.com/news/opinion/oped/bs-ed-re-entry-20161207-story.html</u>.;

⁴³ See, e.g., Editorial Board, The Second Chance Act Proves its Worth, N.Y. TIMES, June 27, 2014, https://www.nytimes.com/2014/06/28/opinion/committed-states-have-reduced-recidivism-rates.html.

⁴⁴ Matt Zapotosky & Sari Horwitz, *The Justice Department Just Unveiled New Prison Reforms. But the Trump Administration Might Scrap Them*, WASH. POST, Nov. 30, 2016, <u>https://www.washingtonpost.com/news/post-nation/wp/2016/11/30/the-justice-department-just-unveiled-new-prison-reforms-but-the-trump-administration-might-scrap-</u>

them/?utm_term=.6fbb20c03444.

⁴⁵ See, e.g., Second Chances Through Successful Reentry, THE HAMILTON PROJECT (Oct. 21, 2016), at 18-21, http://www.hamiltonproject.org/assets/files/second chances full transcript.pdf.

⁴⁶ See Del Quentin Wilber & Lisa Mascaro, *Trump Picks Sen. Jeff Sessions for Attorney General*, L.A. TIMES, Nov. 18, 2016, <u>http://www.latimes.com/politics/la-na-pol-sessions-attorney-general-20161118-story.html</u>.

⁴⁷ See Gary Fields, Senate Clears Prisoner Bill, WALL STREET JOURNAL, Mar. 12, 2008, http://blogs.wsj.com/washwire/2008/03/12/senate-clears-prisoner-bill/.

⁴⁸ Douglas A. Berman, *Why is Senator Sessions Really Blocking the Second Chance Act?*, SENTENCING LAW & POLICY (Jan. 10, 2008), <u>http://sentencing.typepad.com/sentencing_law_and_policy/2008/01/why-is-senator.html</u>.

⁴⁹ See Gary Fields, Senate Clears Prisoner Bill, WALL STREET JOURNAL, Mar. 12, 2008, http://blogs.wsj.com/washwire/2008/03/12/senate-clears-prisoner-bill/.

⁵⁰ S.2123, Sentencing Reform and Corrections Act of 2015: Hearing Before the Senate Comm. on the Judiciary, 114 Cong. (2015), http://www.judiciary.senate.gov/meetings/s-2123-sentencing-reform-and-corrections-act-of-2015 (at 3:06:00).