



January 10, 2023

The Honorable Kevin McCarthy
Speaker of the House
U.S. House of Representatives
Washington, D.C., 20515

The Honorable Hakeem Jeffries
Minority Leader
U.S. House of Representatives
Washington, D.C., 2051

Re: Organizations oppose H.R. 27, the Prosecutors Need to Prosecute Act

Dear Speaker McCarthy and Leader Jeffries:

On behalf of the Justice Roundtable and the undersigned organizations, we write to express our opposition to H.R. 27, the Prosecutors Need to Prosecute Act. Prosecutors are the most powerful players in the criminal legal system, with the discretion to charge, request bail, make plea offers, and recommend sentences. Use of that discretion to over-punish or promote sentences disproportionate to the harm caused has contributed to ballooning prison populations and racial disparities. Its prudent exercise can be a tool for evidence-based reform by reducing the use of unnecessary prosecutions and harsh sentences that do not lead to public safety. Efforts to pressure prosecutors to use their discretion to send more people to prison and seek longer sentences, such as the Prosecutors Need to Prosecute Act, are a threat to justice, equity, and public safety. We urge Representatives to oppose this bill.

The goal of H.R. 27 is clear: to pressure prosecutors to prosecute more cases more harshly despite bipartisan concerns that the United States already incarcerates far too many people for far too long. The bill mandates that prosecutor's offices in jurisdictions with populations over 380,000 disclose, for enumerated offenses, information related to the number of cases referred by the police, declinations, bail requests, plea bargains, an individual's criminal history, and convictions. The bill makes this reporting a requirement for funding under the Edward Byrne Memorial Justice Assistance Grant Program ("Byrne") and is based on a false premise that filing more criminal charges, detaining more people pre-trial, and making fewer plea offers will make our communities safer. Meanwhile, the bill fails to require the collection of data that would provide a robust picture of prosecutorial practices and avenues for reform.

The bill sets a dangerous precedent that lawmakers may condition future Byrne funding on the way prosecutors wield their discretion. For example, Byrne funding could be conditioned on having low declination rates, creating incentives to increase incarceration rates and intruding on the constitutional duty of prosecutors to



decline cases that they are unable to prove beyond a reasonable doubt. The bill is also designed to pressure prosecutors to seek harsher penalties. The power of federal funding incentives to increase incarceration is well-established: the incentives in the 1994 Crime Bill contributed to skyrocketing incarceration rates in the 1990s.¹ Yet there is little evidence that these practices made America safer, even as they imposed drastic consequences, particularly on Black and Brown communities.

Meanwhile, this bill does not address violent crime. The bill rests on the assumption that more pretrial incarceration and more prosecutions seeking harsher sentences will increase public safety. Yet there is no evidence to support this. Research by the NAACP Legal Defense and Education Fund's Thurgood Marshall Institute found that non-reform prosecutors, the absence of bail reform, and increased police budgets did not prevent cities from experiencing a homicide spike in 2020.² Even if collecting data on charging, declinations, bail recommendations, and plea offers could help address violent crime, the Prosecutors Need to Prosecute Act excludes the portion of the country experiencing the greatest proportional increase in gun crime: rural America.³ States that experienced some of the highest jumps in the murder rate from 2019 to 2020, such as Wyoming and South Dakota, would be exempt from the bill's reporting requirements because the population served by those prosecuting offices fall below the 380,000 threshold.⁴ A better approach to public safety would be to invest in evidence-based approaches, such as non-carceral crisis response, violence intervention, substance abuse treatment, lifting barriers to reentry for formerly-incarcerated people, and investments in education, housing, and job training.

Transparency in criminal legal system data is critical and there should be bipartisan efforts to improve data collection around arrests, prosecutions, and convictions; however, the Prosecutors Need to Prosecute Act is the wrong approach to achieve these goals. All communities should be able to hold their prosecutors

¹ Lauren-Brooke Eisen, *The 1994 Crime Bill and Beyond: How Federal Funding Shapes the Criminal Justice System*, Brennan Center for Justice, Sep. 9, 2019, <https://www.brennancenter.org/our-work/analysis-opinion/1994-crime-bill-and-beyond-how-federal-funding-shapes-criminal-justice>.

² Kesha S. Moore, et al., *Thurgood Marshall Institute, NAACP Legal Defense and Educational Fund, Inc., The Truth Behind Crime Statistics* (2022), <https://www.naacpldf.org/wp-content/uploads/2022-08-03-TMI-Truth-in-Crime-Statistics-Report-FINAL-2.pdf>.

³ David Correa & Nick Wilson, *Gun Violence in Rural America*, Center for American Progress, Sep. 26, 2022, <https://www.americanprogress.org/article/gun-violence-in-rural-america/>

⁴ Kylie Murdock & Jim Kessler, *The Red State Murder Problem*, Third Way, Mar. 15, 2022, <https://www.thirdway.org/report/the-red-state-murder-problem> (reporting that two of the five states with the greatest murder rate increase from 2019 to 2020 were Wyoming at 91.7% and South Dakota at 69%).



accountable for their policies and actions. Prosecutors should disclose a wide array of data, including the demographics of those they prosecute. Experts have offered valuable models for how prosecutors can collect, monitor, and share data with their communities to improve safety, fairness, and equity.⁵ Yet this bill fails to require reporting of critical data needed to provide a full and accurate picture of prosecutorial practices. As such, the bill would not only not result in real accountability, but compliance would also come at the expense of reforms that are more likely to contribute to public safety.

For the foregoing reasons, we urge Representatives to oppose the Prosecutors Need to Prosecute Act. If you have any questions, please contact Liz Komar, sentencing reform counsel at the Sentencing Project (lkomar@sentencingproject.org) or Aamra Ahmad, senior policy counsel at ACLU (aahmad@aclu.org).

Sincerely,

American Civil Liberties Union (ACLU)
American Humanist Association
Campaign for the Fair Sentencing of Youth
Center for Disability Rights
Center for Policing Equity
Church of Scientology National Affairs Office
Citizens United for Rehabilitation of Errants (CURE)
Civil Rights Corps
Color of Change
Defending Rights & Dissent
Drug Policy Alliance
Due Process Institute
Innocence Project
Jewish Council for Public Affairs
Justice Roundtable
Justice Strategies
The Leadership Conference on Civil and Human Rights
NAACP Legal Defense and Educational Fund, Inc. (LDF)
National Association of Criminal Defense Lawyers (NACDL)
National Immigration Project of the National Lawyers Guild
NETWORK Lobby for Catholic Social Justice
The Sentencing Project
Southern Poverty Law Center Action Fund
Vera Institute of Justice

⁵ For example, <https://prosecutorialperformanceindicators.org/>